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on International Trade Law**  
**Working Group I (MSMEs)**  
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## Draft Legislative Guide on an UNCITRAL Limited Liability Organization

Note by the Secretariat

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## Background information

1. At its forty-sixth session in 2013, the United Nations Commission on International Trade Law (UNCITRAL) decided to work towards reducing the legal obstacles and barriers encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, with a particular focus on their context in developing economies.<sup>1</sup> The Commission understood that the life cycle of a business consists of several stages, which would include starting, operating, restructuring and dissolving a business. The mandate granted to Working Group I by the Commission was that work should start with a focus on the first stage in that life cycle, i.e. starting a business.<sup>2</sup>

2. Working Group I began its deliberations on that subject at its twenty-second session in February 2014 and from its twenty-third session, in November 2014, to its thirtieth session, in March 2018, it proceeded to consider two main topics, one of which related to a simplified business entity suited to the needs of MSMEs.<sup>3</sup> Those deliberations were based on the framework of issues drawn from the key features of simplified business regimes (outlined in [A/CN.9/WG.1/WP.86](#)), and as illustrated in the draft model law on a simplified business entity ([A/CN.9/WG.1/WP.89](#)), as well as other possible models (for example, that contained in the annex to [A/CN.9/WG.1/WP.83](#)).

3. Following its discussion of the framework of issues that might be considered in a simplified business entity regime, at its twenty-sixth session (New York, 4 to 8 April 2016), the Working Group decided that the legislative text it was preparing on a simplified business entity should be in the form of a legislative guide. To that end, the Working Group requested the Secretariat to prepare for discussion at a future session a draft legislative guide (consisting of recommendations and commentary) that reflected its policy discussions to date.<sup>4</sup> This draft legislative guide has been prepared by the Secretariat in response to that request.

4. The Working Group started considering the draft guide at its twenty-seventh session (Vienna, 3 to 7 October 2017) and continued such work at its twenty-eighth session (New York, 1 to 9 May 2017). At those sessions, it considered all sections of the Guide (as contained in [A/CN.9/WG.1/WP.99/Add.1](#)) save for sections G to K. 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 the draft legislative guide on key principles of a business registry<sup>5</sup> and resumed its discussion on the draft legislative guide on an UNCITRAL Limited Liability Organization “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 (as it appeared in working paper [A/CN.9/WG.1/WP.112](#)) including changes arising from deliberations at its

<sup>1</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321; reiterated at subsequent sessions of the Commission: *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 220, 225, 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; *ibid.*, *Seventy-fourth session, Supplement No. 17 (A/74/17)* in preparation.

<sup>2</sup> The Commission stated that “such work should start with a focus on the legal questions surrounding the simplification of incorporation” and confirmed in subsequent sessions Working Group I’s approach that such work should proceed on two relevant issues: legal questions surrounding the creation of a simplified business entity and key principles in business registration. *Supra*, footnote 1, and *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 224.

<sup>3</sup> Report of Working Group I (MSMEs) on the work of its twenty-sixth session, [A/CN.9/866](#), paras. 22 to 47.

<sup>4</sup> *Ibid.*, paras. 48 to 50.

<sup>5</sup> The draft legislative guide was finalized and adopted by the Commission at its fifty-first session in 2018. See *Official Records of the General Assembly, Seventy-third session, Supplement No. 17 (A/73/17)*, para. 111.

twenty-seventh and twenty-eighth sessions. The following recommendations (and attendant commentary) were discussed: recommendations 7 to 12 (Sections B on Formation of the UNLLO and C on Organization of the UNLLO), save for recommendation 10; recommendation 15 (Section D on Management by managers of members) and recommendations 16 and 17 (Section E on Percentage of the ownership of the UNLLO and contributions by members).

5. The thirty-second session of the Working Group (New York, 25 to 29 March 2019) opened with a two-day colloquium on contractual networks and other forms of inter-firm cooperation (25 and 26 March). Following the colloquium, the Working Group resumed its consideration of the draft legislative guide (as it appeared in [A/CN.9/WG.I/WP.114](#)). The following recommendations and related commentary were discussed (some of which were already considered at its thirty-first session): recommendation 9 (section B on Formation), recommendation 10 (Section C on Organization of the UNLLO), recommendations 11 to 16 (Section D on Management of the UNLLO) and recommendation 17 (Section E on Members' share of and contributions to the UNLLO). The Working Group also discussed several definitions included in the Terminology section.

6. The current revision of the draft legislative guide includes the changes arising from the deliberations of the Working Group at its thirty-second session.<sup>6</sup> The Secretariat has also made additional adjustments necessary to facilitate the cohesion and consistency of the text. When such adjustments have resulted in changing the order of the recommendations and the relevant commentary, the recommendations have been renumbered consecutively and any cross reference adjusted accordingly. Guidance to the changes made is reflected in footnotes throughout the text.<sup>7</sup> In addition, a "Note to the Working Group" before section I of the draft text (on restructuring or conversion) draws attention to issues that require further consideration by the Working Group.<sup>8</sup>

7. The text of the draft legislative guide is reproduced as an Annex to this Note of the Secretariat for consideration by the Working Group.

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<sup>6</sup> See the Report of the Working Group at that session, [A/CN.9/968](#).

<sup>7</sup> The Working Group may wish to note that the current text of the draft guide includes footnotes referring to earlier versions of this working paper or to deliberations of the Working Group prior to its thirty-second session. These footnotes have been retained for portions of the guide that have not been considered yet, or were only considered in part by the Working Group.

<sup>8</sup> The Working Group may wish to recall that most of the "Notes to the Working Group" included in the previous iteration of this working paper ([A/CN.9/WG.I/WP.114](#)) were discussed at its thirty-second session.

## Annex

# Draft legislative guide on an UNCITRAL Limited Liability Organization (UNLLO)

## I. Introduction

### A. Purpose of the Legislative Guide<sup>1</sup>

1. Most businesses in the world are MSMEs. They are the backbone of many countries' economy, and account worldwide for a large share of the employment rate and of States' Gross Domestic Product (GDP). Despite this major role, however, several factors still affect their performance and capacity to develop. Unlike larger businesses, they lack the economies of scale to tap into new markets and expand business, thus missing the growth opportunities offered by globalization and economic integration. International forums and organizations, as well as individual States, recognize the importance of strengthening the economic role and position of MSMEs to enable them to benefit from an evolving international economic environment. UNCITRAL has underscored that importance through its decision to take up work on reducing the legal obstacles faced by MSMEs in their life cycle. This work has resulted in, inter alia, the preparation of this legislative guide on an [UNCITRAL Limited Liability Organization (UNLLO)].<sup>2</sup>

2. In order to support MSME formation and operation, various States representing different legal traditions around the world<sup>3</sup> have adopted legislation on simplified business forms. Those business forms can be of the corporate, partnership or hybrid type,<sup>4</sup> and they can provide for single-member businesses<sup>5</sup> or for business forms that may not necessitate the granting of legal personality, while permitting asset partitioning.<sup>6</sup> Regardless of their more specific features, those laws all aim for simplified formation, flexibility of organization and operation, and asset partitioning.

3. Many of these business forms have succeeded in their respective jurisdictions. Their adoption permitted lowering of entry barriers, provided effective organizational solutions and reduced transaction costs, thus increasing employment opportunities and economic growth rates. Moreover, these new business forms have promoted migration of informal businesses to the formal economy. The various domestic approaches to creating or reforming such business forms – both MSME-specific and

<sup>1</sup> The Working Group may wish to note that the Secretariat carried out an extensive revision of Section A (“Purpose of the Legislative Guide”) in working paper [A/CN.9/WG.1/WP.114](#) (paras. 1 to 18) to eliminate redundancy. Additional adjustments have been made in the current text (paras. 1 to 14) for further improvement.

<sup>2</sup> The Secretariat has placed “[UNCITRAL Limited Liability Organization (UNLLO)]” in brackets to indicate that this is a temporary name pending a Working Group’s decision on this matter, see *infra* footnotes 16 and 24.

<sup>3</sup> A selection of such business forms included in the comparative analysis that the Working Group first considered in this regard ([A/CN.9/WG.1/WP.82](#)) was drawn from 11 different States from different regions of the world and included 16 different legal regimes in total.

<sup>4</sup> See for instance, Colombia, France, Germany, India, Japan, New Zealand, Singapore, South Africa, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

<sup>5</sup> Information shared with the Working Group has included, for example, that in respect of the “auto-entrepreneur”, in force both in France (see paras. 22 to 23 of [A/CN.9/WG.1/WP.87](#)) and the Member States of the Organization for the Harmonization of Business Law in Africa (known by its French acronym, OHADA) (Acte Uniforme Révisé Portant Sur Le Droit Commercial Général, adopted 15 December 2010, see [www.ohada.com/actes-uniformes/940/999/titre-2-statut-de-l-entrepreneurant.html](http://www.ohada.com/actes-uniformes/940/999/titre-2-statut-de-l-entrepreneurant.html)). Other efforts to create particular regimes for single-member businesses have included that of the European Union (Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies, European Commission, Brussels, 9.4.2014 (COM (2014) 212 final)).

<sup>6</sup> See the alternative legislative models for micro and small businesses described by Italy and France in [A/CN.9/WG.1/WP.87](#) and [A/CN.9/WG.1/WP.94](#).

otherwise – have highlighted that good practices around the world share a number of key principles which could thus be said to be international in their application.

4. The Legislative Guide attempts to distil these good practices and key principles into a series of recommendations on how a State could devise and regulate a simplified legal form for MSMEs that can best facilitate their success and sustainability, thereby stimulating entrepreneurship and promoting participation in the economy and the creation of value. The commentary that precedes each recommendation relies both on specific legislative efforts to provide for single-member businesses or business entities, as well as broader reforms to assist MSMEs that have been implemented in various States,<sup>7</sup> so as to explain in greater detail the rationale leading to those recommendations.

## 1. “Think small first”

### (a) Assessing the needs of entrepreneurs

5. A legislative regime for simplified business entities should start with a focus on the actual needs of the smallest business entities and avoid placing unnecessary legal burdens on them. In keeping with these best practices, as well as with the desire to create a legal text that can accommodate the evolution of an MSME from a very small entity to a more complex multi-member entity,<sup>8</sup> a “think small first” approach has been taken in the Guide.<sup>9</sup> To that end, the Guide considers how MSME entrepreneurs could most benefit from legislation based on its recommendations and be encouraged to conform to the principles they contain. Such entrepreneurs are mainly the micro and small businesses around the world for which the main characteristics are strong reliance on human capital rather than organizational processes, limited source and number of employees (usually drawn from family and friends), limited range of products or services offered to customers and limited capital. These entrepreneurs could range from individual street vendors, to small family business owners wishing to scale up and formalize their operations, to small firms seeking to grow and position themselves in more innovative sectors, such as the information technology field, and to women entrepreneurs facing unfavourable institutional and legislative frameworks. Regardless of their size and gender, micro and small entrepreneurs share several common needs, as discussed below.

#### (i) *Freedom, autonomy and flexibility*

6. MSME entrepreneurs could be expected to want *freedom and autonomy* to decide for themselves how they operate their business without being constrained by rigid and formalistic rules and procedures or be subject to detailed mandatory requirements on the conduct of their activities. They also would want the *flexibility* to adapt to changing circumstances that may impact MSMEs more than larger companies, and consider how their business might evolve and develop over time.

#### (ii) *Speed, simplicity and accessibility*

7. MSME entrepreneurs are likely to want *speed and simplicity* to characterize the rules on the legal establishment of their business, and on its administration and operation. These rules should be in simple and *accessible* terms, and the use of modern technology, such as mobile applications to complete payments or prepare balance sheets, should be encouraged.

<sup>7</sup> Information in respect of such reform efforts in a number of States, including Chile, China, Colombia, El Salvador, Mexico, the Philippines, Rwanda, Thailand, and others has been shared in the Working Group.

<sup>8</sup> As agreed by the Working Group at its previous sessions (see paras. 24, 32 and 42 to 43, A/CN.9/800; paras. 67 and 74, A/CN.9/825; and para. 19, A/CN.9/831).

<sup>9</sup> See paras. 1 and 5 of A/CN.9/WG.1/WP.86/Add.1; para. 3 (iii) of A/CN.9/WG.1/WP.90; and paras. 2 and 39 of A/CN.9/WG.1/WP.89.

*(iii) Identity and visibility*

8. MSMEs need an *identity and visibility* in order to more successfully compete in the market, domestic and globalized, and to attract more and better quality clients. In addition to the obvious protections and advantages associated with taking on a legally recognized identity and operating within a recognized legal framework,<sup>10</sup> the business can also use such legally recognized identity to develop its reputation and “brand” and increase its value.<sup>11</sup>

*(iv) Certainty and protection of property rights*

9. Regardless of the size of their business, all entrepreneurs need *certainty in and protection of their property rights*. MSME entrepreneurs will thus wish to control the assets of their business and be able to take advantage of asset partitioning to protect their personal assets from claims of business creditors. Conversely, personal creditors of business owners and managers should not be able to seize business assets in order to satisfy personal debts.

*(v) Control and management*

10. Finally, MSME entrepreneurs generally want *to control and to manage their business*, rather than leaving administrative and strategic decisions to an external manager.

**(b) Drafting the Guide from a “think small first” perspective**

11. The Guide proposes a legal business form that moves away from more traditional, hierarchical and formal governance models that may not be appropriate for small businesses. For example, the Guide acknowledges the MSME entrepreneurs’ need for freedom and flexibility and stresses the importance of freedom of contract. However, the Guide recognizes through many default provisions<sup>12</sup> that such entrepreneurs may also require protection against circumstances or events that may not be foreseeable. Simplicity and accessibility characterize all aspects of the establishment and operation of the business, as well as the terminology used in the Guide. To provide MSMEs with identity and visibility, the Guide sets out a simple vehicle for the entrepreneur to create a legally recognized business with its own legal personality. Limited liability protection for the business entity and rules on the transfer of rights of its members are some of the mechanisms that provide certainty and protection for the property rights of MSME entrepreneurs. Finally, control by MSME entrepreneurs over the operation and management of their business is assured through an emphasis on management by the members of the business entity as the default governance approach and the horizontal organizational structure that characterizes the UNLLO.

**(c) Creating a stand-alone regime**

12. The Legislative Guide also takes the view that the optimal solution for the creation of an appropriate simplified legal regime for MSMEs should not be to reform and simplify existing company law regimes, but rather to develop a separate<sup>13</sup> legal regime that focuses on the needs of MSMEs. The structure envisioned in this text is

<sup>10</sup> Such protections and advantages have been enumerated in para. 31 of [A/CN.9/941](#), and include, inter alia, asset partitioning, protection against potential administrative abuse and other abuse of rights, easier access to credit, labour law protection for employees, and similar features.

<sup>11</sup> On the importance of business registration to provide a commercial identity to a business, see the UNCITRAL Legislative Guide on Key Principles of a Business Registry (the “UNCITRAL Business Registry Guide”).

<sup>12</sup> For greater coherence with the purpose of a legislative recommendation, the Secretariat has replaced “default rules” with “default provisions” and “mandatory rules” with “mandatory provisions” throughout the text.

<sup>13</sup> As agreed by the Working Group at its twenty-fourth session (para. 54, [A/CN.9/831](#)). See also different approaches to legal reform as outlined in paras. 5 to 7 of [A/CN.9/WG.1/WP.82](#).

thus neither dependent upon nor specifically linked to existing partnership, corporation or company law in any State.

13. One clear advantage of that approach is that it enables States to more easily adopt a regime that implements the recommendations of this Guide and permits them to craft appropriate legislative measures using a clean slate method. Further, a separate<sup>14</sup> legal regime for MSMEs can provide internationally recognized standards for the establishment of simplified business entities, which would limit problems arising from the lack of international recognition of the legal form of the business thus facilitating cross-border transactions.<sup>15</sup>

14. In pursuit of this informed and distinct approach to MSME law reform, the Guide has adopted terminology that is intended to be as neutral as possible. In order to consider existing company law solutions but not to rely on their more prescriptive rules, “corporate” and “company” terminology is not used. Instead, this Guide describes a new entity: the “UNCITRAL Limited Liability Organization” (the “UNLLO”).<sup>16</sup> The term is an indication that the business form created through the Guide’s recommendations is innovative and independent from existing company law regimes and their more prescriptive rules. The creation of the UNLLO aims to fulfil the desired goals and considerations outlined above.

## B. Terminology

15. The following terms are intended to provide orientation to the reader of the Legislative Guide. An explanation of their use in the Guide may assist in ensuring that the concepts discussed are clear and widely understood. It should be noted that whenever terms such as data, documents, agreements, tax returns, financial statements, records and other similar expressions are used, reference is intended to include both their electronic and paper versions unless otherwise indicated in the text.<sup>17</sup>

- *Financial statement*: “Financial statement” means the report that presents information on the financial activities and conditions of the UNLLO.
- [...] <sup>18</sup>
- *Designated manager*: “Designated manager” means the person or 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 or some combination thereof.<sup>19</sup>
- *Majority*: “Majority” means more than half of the UNLLO members on a per capita basis.<sup>20</sup>

<sup>14</sup> As agreed by the Working Group at its twenty-fourth session (para. 54, [A/CN.9/831](#)). See also different approaches to legal reform as outlined in paras. 5 to 7 of [A/CN.9/WG.1/WP.82](#).

<sup>15</sup> See Note by the UNCITRAL Secretariat, [A/CN.9/780](#).

<sup>16</sup> At its twenty-seventh session, the Working Group agreed to use the term “UNLLO” on an interim basis until it could decide on a preferred term to denote the simplified business entity being discussed (para. 43, [A/CN.9/895](#)).

<sup>17</sup> The Secretariat has redrafted the paragraph (para. 27 of [A/CN.9/WG.1/WP.112](#)) for greater clarity.

<sup>18</sup> At its thirty-second session, the Working Group agreed that the term “formation data” could be removed from the terminology section and the Guide could instead refer to “information provided to the business registry” (para. 26, [A/CN.9/968](#)). This change has been implemented throughout the Guide.

<sup>19</sup> At its thirty-second session, the Working Group confirmed the need for a specific term that would be applicable to situations in which the UNLLO was not managed by all of its members exclusively (para. 35, [A/CN.9/968](#)). The Secretariat has therefore retained “designated manager” as a defined term.

<sup>20</sup> At its thirty-second session, the Working Group agreed that differences among members should be resolved by a majority of members by number (para. 37, [A/CN.9/968](#)). The Secretariat has therefore defined “majority” by reference to “per capita” to differentiate it from votes per share.

- *Member(s)*: “Member(s)” means the owner(s) of the UNLLO (cf. “UNLLO”).
- *Organization rules*: “organization rules” means the rules that govern the organization of the UNLLO.<sup>21</sup>
- *Qualified majority*: “Qualified majority” means [percentage to be included subject to the Working Group decision] of the UNLLO members on a per capita basis.<sup>22</sup>
- *Share*: “share” means the ownership stake of an UNLLO that a member has. It includes the member’s financial stake in the profits and losses of the UNLLO and the right to receive distributions.<sup>23</sup>
- *UNCITRAL limited liability organization [UNLLO]*:<sup>24</sup> “UNCITRAL limited liability organization [UNLLO]” means the legal business form with limited liability and legal personality discussed in the Legislative Guide.

## II. Establishment and operation of the UNLLO

### A. General provisions

#### (a) Legislative framework

16. As noted above (see para. 12), rather than proposing adjustments or variations to the company structures that exist in most countries, the Guide proposes a distinct business form which, while sharing various features of other corporate forms, is intended to be enacted as a stand-alone legislation that has been prepared on the basis of the recommendations in the Legislative Guide.<sup>25</sup>

17. Although the legal forms for businesses that are not publicly traded may vary from State to State, one of their characteristics is that they tend to function as independently as possible from the strict rules that govern corporations. For example, such businesses tend to have specific relief from the rules governing public companies that may result in: simpler formation rules; nominal or no minimum capital requirement; greater freedom of contract; and fewer disclosure requirements.

#### (b) Flexibility through freedom of contract

18. The main focus of legislative reforms to assist the creation of businesses that are not publicly traded to date has been on the creation of flexible business forms that can be tailored to the needs of certain types of closely held businesses, including: MSMEs wishing to formalize and segregate personal and business assets; family firms; joint ventures; and professional service firms. In some States, reforms have

<sup>21</sup> At its thirty-second session, the Working Group agreed to change “members’ agreement” to “organization rules” and to remove the word “recorded” from the definition (paras. 27–28, [A/CN.9/968](#)). The Secretariat has replaced “members’ agreement” with “organization rules” throughout the text.

<sup>22</sup> At its thirty-first session, the Working Group agreed to define “qualified majority” at its future sessions (para. 68, [A/CN.9/963](#)). The Secretariat has clarified that votes are to be calculated per member, and not according to the members’ share, consistent with the definition of majority, above.

<sup>23</sup> At its thirty-second session, the Working Group agreed to limit the definition of share to economic rights (para. 46, [A/CN.9/968](#)), and the Secretariat has adjusted the text of the Guide accordingly.

<sup>24</sup> The Working Group may wish to note that the term “UNLLO” is defined only in order to facilitate consideration of these materials, in accordance with the Working Group decision that such term be used on an interim basis (see *supra* footnote 16).

<sup>25</sup> At its twenty-seventh session, the Working Group agreed that it would revert to its discussion on linkage of the Legislative Guide to existing domestic company law at a later stage (para. 22, [A/CN.9/895](#)). The Secretariat has redrafted the paragraph (para. 20 of [A/CN.9/WG.1/WP.114](#)) to clarify that while the UNLLO is based on freestanding legislation, it would still need to be consistent with a State’s domestic law and general principles of law would continue to apply to fill any gaps.



resulted in legislative models that permit the separation of the business assets of an entity from the personal assets of its members without resort to legal personality. This would allow asset partitioning for MSMEs and their members by way of a legal structure that stops short of full limited liability and legal personality.<sup>26</sup>

19. The UNLLO is intended to be added to this list of flexible business forms. The flexibility in business form has been achieved in part by allowing the UNLLO to be organized for a wide range of activities (see paras. 23 and 24 and rec. 2 below) and by recognizing the importance of freedom of contract for these businesses. In this respect, freedom of contract has been made the guiding principle in establishing the internal organization of the UNLLO (see paras. 53 and 54 below).<sup>27</sup>

20. The Legislative Guide permits the members of the business to agree through contractual mechanisms (i.e. organization rules) on the internal governance of the enterprise, to contract around the more superfluous and cumbersome protective requirements traditionally associated with public companies, and to tailor rights and duties that are more consistent with the needs of smaller businesses.

21. However, the Legislative Guide also includes certain recommendations for mandatory provisions that cannot be contracted out of by agreement among the members, as well as default provisions to fill any gaps in the organization rules. These default provisions can be particularly important for smaller or less-experienced business persons who may not foresee every eventuality required for the successful operation of the UNLLO.

22. Recommendation 1 underscores the distinct nature of the UNLLO, as a special form of business entity that allows its members extensive freedom of contract to organize its operations.<sup>28</sup>

**Recommendation 1: The law should provide that an UNCITRAL Limited Liability Organization (“UNLLO”) is governed by [this law] and by the organization rules.<sup>29</sup>**

23. Recommendation 2 permits an UNLLO to be organized for any lawful business or commercial activity. A very broad approach is taken to the permitted activity of an UNLLO in order to provide maximum flexibility to the MSMEs that are anticipated to use this business form. In keeping with the traditional approach of UNCITRAL texts, the Guide supports the view that States should give the terms “commercial” and “business” broad interpretation to avoid unwarranted narrowing of the permitted scope of the UNLLO.<sup>30</sup> Moreover, the Legislative Guide follows the approach

<sup>26</sup> At its twenty-seventh session, the Working Group agreed to move the second sentence of para. 37 of A/CN.9/WG.I/WP.99 (“However, it should be noted ... legal personality.”) to a more appropriate section of the Legislative Guide and to delete the phrase “limited liability” after “without resort to legal personality” (paras. 31 and 32, A/CN.9/895). The Secretariat has relocated that sentence in para. 19 above, with additional editorial adjustments.

<sup>27</sup> With regard to the principle of freedom of contract that characterizes the UNLLO, the Working Group has observed that MSMEs could find it difficult to establish the necessary rules, and that standard forms could be useful to assist such businesses (see para. 63, A/CN.9/800; para. 23 of A/CN.9/WG.I/WP.86; and para. 58, A/CN.9/963). The Working Group has supported a proposal to prepare such standard form organization rules to assist MSMEs in this regard (para. 33, A/CN.9/968).

<sup>28</sup> The Secretariat revised paras. 18 to 22 of the Guide (paras. 27 to 30 of A/CN.9/WG.I/WP.99) in previous iterations of this working paper for improved clarity of the text. Para. 22 has been further revised in A/CN.9/WG.I/WP.116 for consistency with redrafted para. 16 above.

<sup>29</sup> At its twenty-seventh session, the Working Group agreed to delete “if any” at the end of rec. 1 (para. 24, A/CN.9/895) and to defer decision on rec. 1 and its commentary until it had considered rec. 10 and the accompanying commentary (para. 28, A/CN.9/895). The Secretariat has placed “this law” in brackets to indicate that this phrase refers to the domestic legislation that will be enacted on the basis of this Legislative Guide.

<sup>30</sup> The Secretariat has redrafted this paragraph (paras. 31 and 32 of A/CN.9/WG.I/WP.99) for consistency with revised rec. 2 and further to a request of the Working Group at its

adopted by several legislative reforms of excluding the use of general purpose clauses so that business entities can engage in all lawful activities under the law of the State. The Legislative Guide thus leaves it open to the members of the UNLLO to decide whether or not they wish to include a more restrictive purpose clause in the organization rules. States requiring business entities to list all of their activities may wish to consider removing that requirement for UNLLOs.

24. States wishing to prohibit an UNLLO from engaging in certain regulated industries, such as banking, microcredit and insurance industries, could enumerate the industrial sectors and activities in which an UNLLO may not participate. For additional clarity, States may expressly permit participation of the UNLLO in specific activities which might include activities in the agricultural, artisanal and cultural sectors.<sup>31</sup>

**Recommendation 2: The law should provide that an UNLLO may be organized for any lawful business or commercial<sup>32</sup> activity.**

25. The Legislative Guide recommends the granting of legal personality to the UNLLO in order for it to be a legal entity separate from its members.<sup>33</sup> Legal personality in this context confers upon the UNLLO the legal rights and duties necessary for it to function within a legal system, including the ability to acquire rights and assume obligations in its own name.

26. Legal personality provides a means through which the UNLLO's assets can be separated from the personal assets of its members, a process which has been referred to as affirmative asset partitioning. A distinct legal personality permits the UNLLO to be shielded from potential claims by the personal creditors of its members. This, in turn, facilitates defensive asset partitioning by an UNLLO that has been granted limited liability, which can then protect the personal assets of the UNLLO members from exposure in the event that the UNLLO is unable to satisfy its debts or meet its obligations or becomes involved in legal disputes.<sup>34</sup> Legal personality and limited liability protection (see rec. 4) thus provide a convenient legal mechanism for the UNLLO to separate its assets from the personal assets of its members.<sup>35</sup>

27. It should be noted that domestic taxation policy in respect of the legal form of an UNLLO is not considered in the Legislative Guide. Such policy matters are left to States drafting legislation on the basis of this Guide, with the understanding that they might consider their policy options in the broader context of how best to reduce legal obstacles for UNLLOs, and MSMEs more generally.

**Recommendation 3: The law should provide that the UNLLO has a legal personality distinct from its members.<sup>36</sup>**

28. Recommendation 4 states one of the essential consequences of conferring legal personality to a business entity, which is that the members of the UNLLO are not

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twenty-seventh session that the terms “commercial” and “business” should be given a broad interpretation (para. 30, [A/CN.9/895](#)).

<sup>31</sup> The Secretariat has revised the drafting of para. 24 (para. 36 of [A/CN.9/WG.1/WP.112](#)), including by deleting the phrase “or participation ... funds”, for improved clarity.

<sup>32</sup> At its twenty-seventh session, the Working Group agreed to insert the phrase “business or commercial” before “activity” (para. 30, [A/CN.9/895](#)).

<sup>33</sup> The Secretariat has revised the opening sentence of para. 25 for improved clarity (para. 37 of [A/CN.9/WG.1/WP.112](#)).

<sup>34</sup> The Secretariat has shifted the order of the sentences “Such distinct ... legal disputes” as they appeared in [A/CN.9/WG.1/WP.99](#) for improved consistency of the paragraph.

<sup>35</sup> In keeping with deliberations of the Working Group at its twenty-seventh session, the Secretariat has included here (para. 36 of [A/CN.9/WG.1/WP.99](#)) the opening sentence of para. 37 of [A/CN.9/WG.1/WP.99](#). See also *supra*, footnote 26.

<sup>36</sup> At its twenty-seventh session, the Working Group agreed to insert the phrase “distinct ... members” at the end of the recommendation (para. 33, [A/CN.9/895](#)).

personally liable for the obligations and debts of the UNLLO, except in cases of misuse or fraudulent use by the members of the legal personality of the UNLLO.<sup>37</sup> As such, recommendation 4 includes a mandatory provision.

29. Limited liability<sup>38</sup> permits entrepreneurs to take business decisions without concern that their personal assets will be jeopardized in the event the business entity does not perform well or becomes involved in legal disputes.<sup>39</sup> This is important both for the protection of the members of the organization and for the promotion of innovation and business creation, as it allows entrepreneurs to take business risks without fear of failure. However, many MSMEs do not currently enjoy the benefits of limited liability protection. In some States, limited liability protection is not offered to MSMEs because of concerns that it would encourage opportunism by entrepreneurs and provide insufficient protection for third parties dealing with the MSME. Other States, however, grant members of MSMEs access to limited liability protection, since this is considered to promote entrepreneurship and facilitate capital formation.<sup>40</sup> As such, and in order to offer this important and attractive feature to such economic actors, the legislative regime establishing the UNLLO offers limited liability protection to UNLLO members.

30. The presence of such a liability shield generally protects the members of an UNLLO from incurring direct or indirect personal liability as a result of the activities of the UNLLO. In effect, the financial liability of a member of the UNLLO is limited to a fixed sum, usually the value of the member's contribution to the UNLLO. As noted above (see paras. 25 and 26), limited liability of members and distinct legal personality of the organization often go hand in hand (see rec. 3 above). Granting both attributes to the UNLLO will assist in promoting the stability of the organization and access by it to lower cost credit.

31. The UNLLO itself is liable to its general creditors and all of the assets of the UNLLO are available to satisfy those claims. In addition, it is important to note that the limitation on the liability of a member for the obligations of the UNLLO refers to liability that results solely from that person's status as a member of the UNLLO. Members of the UNLLO may still have personal liability for personal tort<sup>41</sup> or for example, a member may be liable for a personal guarantee given in respect of the obligations of the UNLLO. Moreover, a contract entered into with a third party before the formation of the UNLLO may give rise to personal liability of the members or managers of the UNLLO who entered into that contract. Members should include in the organization rules a provision on how such instances should be addressed, for

<sup>37</sup> Further to changes requested by the Working Group at its twenty-seventh session (para. 34(b), [A/CN.9/895](#)), and modifications suggested by the Secretariat for consistency with revised rec. 4, para. 28 (para. 40, [A/CN.9/WG.1/WP.112](#)) previously read as follows: "Draft recommendation 4 establishes the default provision that members of the UNLLO will enjoy limited liability for the obligations of the UNLLO". The Secretariat, however, suggests a further revision of this paragraph for improved clarity of the concept of limited liability and its relation to legal personality. Moreover, it is suggested that the provision in rec. 4 be defined as a mandatory and not a default provision. The Secretariat has included the concept of how members can apportion liability among themselves (see para. 36, [A/CN.9/895](#)) in para. 85. See also footnote 123 *infra*.

<sup>38</sup> The Working Group might wish to consider whether, in this section, it would be advisable to keep separate the discussion on a single-member UNLLO and more sophisticated forms of an UNLLO (para. 90, [A/CN.9/963](#)).

<sup>39</sup> The Secretariat has replaced the phrase "in case ... failure" after "jeopardize" with the current drafting to better clarify the scope of "limited liability".

<sup>40</sup> The Secretariat has added the sentences "In some States ... capital formation" to the paragraph (para. 39 of [A/CN.9/WG.1/WP.99](#)) for improved clarity of the text.

<sup>41</sup> At its twenty-seventh session, the Working Group agreed to delete the phrase "or liability ... UNLLO", before "or for example", since it concerned liability matters of a different nature from those discussed in this paragraph (para. 34(a), [A/CN.9/895](#)).

example whether the UNLLO would assume the rights and obligations negotiated on its behalf.<sup>42</sup>

32. Of course, it will remain open for courts to lift the limited liability protection and impose personal liability on members and managers in cases of fraud or other wrongful acts committed in the name of the UNLLO (“piercing the corporate veil”).<sup>43</sup> Such abuse of the UNLLO legal form could arise, for example, where a member makes use of UNLLO assets as though they were that member’s personal assets.

**Recommendation 4: The law should provide that a member is not personally liable for the obligations of the UNLLO solely by reason of being a member of that UNLLO.**<sup>44</sup>

33. Some States maintain the view that a minimum capital requirement is a reasonable quid pro quo for members of a business that is not publicly traded to receive the benefit of limited liability protection. However, many of those States have significantly reduced minimum capital requirements for these businesses to nominal or initially low but progressively increasing amounts. It has been suggested that even in a nominal or progressive form minimum capital requirements can be conducive to business growth, since they function not only to protect third parties, but also to assist in terms of the soundness, effectiveness and productivity of the business and provide information in respect of financial and decision-making rights.<sup>45</sup> On the other hand, concerns have been raised that capital requirements, including progressive capital requirements, could have a negative impact upon small start-up enterprises. The first three years of an enterprise’s life cycle are the most critical and yet it would be required to progressively build up its reserves during that period in spite of possible financial fragility.<sup>46</sup> Moreover, since the minimum capital required to create a business, along with the accounting rules of the required capitalization, is often one of the most important considerations for new businesses, its elimination may be a factor that can positively affect the rate of establishment of business entities. Further, as a matter of State policy, one particular problem related to establishing minimum capital requirements is the difficulty of quantifying an appropriate amount, and the rigidity inherent in making such a choice.<sup>47</sup>

34. The issue of minimum capital requirements should be dealt with in the context of general mechanisms for the protection of creditors and other third parties dealing with the UNLLO.<sup>48</sup> The more important of such mechanisms are included in the

<sup>42</sup> At its twenty-seventh session, the Working Group agreed to include in the commentary a discussion in respect of contracts entered into prior to the legal formation of the UNLLO (para. 51, A/CN.9/895). The Secretariat has redrafted the last sentence (“Members should ... on its behalf”) of the paragraph (para. 35 of A/CN.9/WG.1/WP.114) for improved consistency with the deliberations of the Working Group at that session.

<sup>43</sup> See also para. 34(e) in relation to rec. 5, as well as recs. 17, 20 and 21.

<sup>44</sup> At its twenty-seventh session, the Working Group agreed to retain the text of rec. 4.1 and to delete rec. 4.2 as they appeared in footnote 37 of A/CN.9/WG.1/WP.99, but to reflect the content of proposed rec. 4.2 elsewhere in the text possibly in relation to the organization rules (para. 37, A/CN.9/895). The Secretariat has implemented that suggestion in para. 85 of the current revision.

<sup>45</sup> At its thirty-first session, the Working Group suggested that the term “voting rights” could cause confusion in a simplified context such as that of the UNLLO. The Secretariat thus suggests replacing it with “decision-making rights” throughout the text of the Guide.

<sup>46</sup> The Secretariat has redrafted this paragraph (para. 44 of A/CN.9/WG.1/WP.99) further to the request of the Working Group at its twenty-seventh session, that the commentary should reflect the considerations raised by the Working Group at its twenty-seventh and previous sessions in regard to policy choices for and against minimum capital requirements (para. 42, A/CN.9/895).

<sup>47</sup> The Secretariat has relocated the sentences “Moreover, since the minimum ... such a choice” of para. 46 of A/CN.9/WG.1/WP.112 here and deleted the rest of that paragraph for improved consistency of the text.

<sup>48</sup> The Working Group may wish to consider including this paragraph under a separate section relating to the protection of creditors and other third parties. The Working Group may wish to consider the following aspects for future discussion: (a) whether the UNLLO members should be

Legislative Guide as mandatory provisions, while others may be found elsewhere in a State's legislative framework. These mechanisms include:

(a) Making members of the UNLLO liable for improper distributions and obligating them to repay the UNLLO for any such distributions (see recs. 20 and 21, which include mandatory provisions);

(b) Prescribing standards of conduct, including good faith and fiduciary responsibilities (see rec. 17, which includes a mandatory provision);

(c) Requiring transparency and accessibility in the keeping and sharing of UNLLO records and information (see recs. 26 and 27, which include mandatory provisions);

(d) Requiring that the entity's business name contain an indicator of its limited liability status (for example, "UNLLO") and that its name be set out in contracts, invoices and other dealings with third parties (see rec. 6, which includes a mandatory provision);

(e) Permitting exceptions to the limited liability protection of members of the UNLLO in certain circumstances (a rule on "piercing the corporate veil" is a judicial remedy in respect of corporations and other limited liability entities that is available in some States but that might<sup>49</sup> not necessarily be imported as a matter of statute in respect of the UNLLO, where it might better be characterized in terms of mandatory provisions prohibiting a member's abuse of the UNLLO legal form; such mandatory provisions are found in recs. 17, 20 and 21);<sup>50</sup>

(f) Establishing requirements in respect of the transparency, quality and public availability of registered information on the UNLLO and its managers (this could be expected to be a function of the business registry law of a State);<sup>51</sup>

(g) Establishing a supervisory role for commercial registries or specialized agencies (this could also be expected to be a function of the business registry law of the State);

(h) Establishing credit bureaux (this would be a policy decision of the State); and

(i) Requiring corporate governance oversight (this would be a policy decision of the State).

35. In keeping with the nature of the UNLLO as a mechanism to assist MSMEs, as well as several legislative reforms that have replaced the minimal capital requirement with other mechanisms to protect third parties dealing with the MSME, the Legislative Guide does not recommend a minimum capital requirement for the establishment of an UNLLO. As noted above, the main mechanisms included in the Legislative Guide to protect third parties dealing with the UNLLO are the mandatory provisions in recommendations 6, 17, 20, 21, 26 and 27, as outlined in subparagraphs 34 (a) to (e) above.

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liable to creditors or just to the UNLLO (in case of an abuse of the UNLLO form by the members); and (b) whether creditors can force the UNLLO to act against its members.

<sup>49</sup> The Secretariat suggests changing "should" (see para. 38 (e) in [A/CN.9/WG.1/WP.114](#)) with "might" to eliminate possible inconsistency with para. 32.

<sup>50</sup> The Working Group may wish to recall that it has previously considered the issue of "piercing the corporate veil", reaching general agreement that "rules on piercing the corporate veil were quite detailed and could vary widely from State to State, such that it might not be productive to attempt to establish such standards in the text of the Guide, outside of noting the potential importance of such a remedy in the commentary and leaving the establishment of standards on it to enacting States." (paras. 56 and 58, [A/CN.9/831](#)). In any event, courts may still "pierce the corporate veil" under State law if the UNLLO legal form is abused by its members, and such a tool need not be specifically inserted into the text of the Legislative Guide (in this regard see also para. 35, [A/CN.9/895](#)).

<sup>51</sup> See the UNCITRAL Business Registry Guide for relevant recommendations.

36. Even where a State has policy reasons to require a minimum capital, this Guide recommends that such a requirement not be imposed on the UNLLO, even if the amount is nominal or progressively increasing.<sup>52</sup> Instead, other mechanisms may be considered, such as the establishment of a maximum size (for example, based upon the number of employees) or level of profitability of the UNLLO, which could then be required to convert to another legal form (for which the State might require minimum capital) upon exceeding that maximum. It should be noted, however, that these other mechanisms could unnecessarily restrict the growth of UNLLOs.

**Recommendation 5: The law should not require a minimum capital for the formation of an UNLLO.**

37. In order to signal to third parties that they may be dealing with an UNLLO, the law should require the name of the UNLLO to include a phrase or abbreviation (such as “UNLLO”)<sup>53</sup> that would enable it to be distinguished from other types of business entities.<sup>54</sup> The use of the same or a similar phrase or abbreviation in different States would assist UNLLOs engaging in cross-border trade as the defining characteristics of the entity would be immediately ascertainable upon recognition of the phrase or abbreviation, even in the cross-border context. Since the UNLLO is proposed as a legal form specifically tailored to MSMEs in addition to existing models, it is best identified by a phrase or abbreviation that is independent from the local legal context.<sup>55</sup>

38. Some States may wish to require the UNLLO to use its distinctive phrase or abbreviation in all correspondence with third parties in order to signal its legal personality.<sup>56</sup> The appropriate sanction for failure to do so should be considered carefully. Denial of the benefit of limited liability protection for an UNLLO may be too severe. Instead, while encouraging UNLLOs to use this distinctive phrase or abbreviation in all correspondence in order to enhance legal certainty, States may decide not to make it mandatory so as to avoid creating an additional burden on the UNLLO by potentially increasing its administrative costs of compliance and verification. Practically speaking, since the distinctive phrase or abbreviation forms part of the name of the UNLLO, it would likely be included in all correspondence involving the UNLLO, in any event.

39. In terms of the name chosen for the UNLLO, all mandatory requirements concerning registration (and approval) of company names in the jurisdiction in which the UNLLO is doing business will have to be satisfied.<sup>57,58</sup>

**Recommendation 6: The law should provide that the name of the UNLLO must include a phrase or abbreviation that identifies it as an UNLLO.**

<sup>52</sup> The Secretariat has revised the opening sentence of the paragraph (para. 49 of [A/CN.9/WG.1/WP.112](#)) for improved clarity.

<sup>53</sup> In keeping with footnotes 16 and 24, *supra*, the term (“UNLLO”) is used here by way of example.

<sup>54</sup> The Working Group agreed on this approach at its twenty-seventh (para. 43, [A/CN.9/895](#)), twenty-third and twenty-fourth sessions (see para. 69, [A/CN.9/825](#) and paras. 61 to 63, [A/CN.9/831](#)).

<sup>55</sup> In light of the discussion in the commentary to rec. 6, the Working Group may wish to agree on a suggested unified phrase or abbreviation to be used for the identification of the UNLLO.

<sup>56</sup> The Secretariat has replaced “limited liability” in para. 38 above (para. 51 of [A/CN.9/WG.1/WP.112](#)) with “legal personality” to emphasize this distinctive feature of the UNLLO.

<sup>57</sup> Further to a request of the Working Group at its twenty-seventh session, the Secretariat has deleted paras. 50 to 52 of [A/CN.9/WG.1/WP.99](#) (para. 46, [A/CN.9/895](#)).

<sup>58</sup> The UNCITRAL Business Registry Guide discusses registration and prior reservation of business names, the importance of such names being unique, State’s criteria on business names requirements and the role of the business registry in assisting entrepreneurs choosing a name for their business.

## B. Formation of the UNLLO

40. The Legislative Guide takes a flexible approach and recommends that the law should permit an UNLLO to be established and operated by a single-member or multiple members. This accommodates the creation of an UNLLO by a sole member, including an individual entrepreneur engaged in relatively simple business activities, and permits the UNLLO to evolve from a single-member entity to a more complex multi-member one. In order to protect creditors and third parties dealing with the UNLLO and to provide legal certainty, recommendation 7 establishes that an UNLLO should have at least one member at all times. In the case of a single-member UNLLO, States should consider establishing a reasonable time period for the replacement of the member, if the organization rules do not contain appropriate provisions in this regard, so as to avoid an automatic dissolution of the UNLLO.<sup>59</sup> As an additional feature to enhance the flexibility of the UNLLO, recommendation 7 does not specify a maximum number of members for the UNLLO.<sup>60</sup>

41. An important issue for States to consider in the legislation establishing the UNLLO is whether a member of an UNLLO may be a legal person or whether only natural persons are permitted membership in an UNLLO. When a legal person is permitted to be a member of the UNLLO, it is desirable that States ensure a wide understanding of the concept of “legal person”, which should include any entity that has been granted a legal personality.<sup>61</sup> Permitting a legal person to be a member of an UNLLO may facilitate the transition of the UNLLO to a more sophisticated type of business. Moreover, membership of a legal person in an UNLLO may help the UNLLO access greater resources (monetary, technological, and skill sets) and new markets, as well as build credibility. This will be valuable not only for UNLLOs operating in States with lower levels of infrastructure, but also for UNLLOs aiming to expand their activities in the domestic market and abroad.

42. However, States may wish to limit membership in an UNLLO to only natural persons, particularly in the case of a single-member UNLLO. Permitting a legal person to be a single-member of an UNLLO<sup>62</sup> might raise concerns in respect of the integrity and the reliability of the legal form of the UNLLO<sup>63</sup> (see also para. 69 below), since it might increase the risk of money-laundering, fraud or other illicit behaviour. If legal persons are permitted to be members of UNLLOs, States should introduce appropriate safeguards to prevent those illicit activities. For example, they could establish that only natural persons can be appointed as managers of an UNLLO, or that the UNLLO be required to maintain information on the identity of the members and managers of the legal person and any changes thereof or a legal person might be granted membership only in a multi-member UNLLO where the other members are natural persons. All those measures may help prevent the creation of an UNLLO without active business operations (a “shell organization”).

<sup>59</sup> The Working Group may wish to note that at its thirty-first session consideration of a proposal to delete the sentence “In the case of ... the UNLLO” was postponed until after the Working Group had considered section H and rec. 22 on transfer of rights (para. 29, [A/CN.9/963](#)).

<sup>60</sup> For improved consistency of the text, the Secretariat has moved the last sentence of para. 54 of [A/CN.9/WG.I/WP.112](#) to the end of this paragraph.

<sup>61</sup> At its thirty-first session, the Working Group agreed to replace the phrase “any legal entity capable of making an investment” with the current drafting (“any entity ... legal personality”). The Secretariat has implemented that decision with a minor editorial adjustment for improved clarity (para. 30, [A/CN.9/963](#)).

<sup>62</sup> The Secretariat has split in two the opening sentence of the paragraph (para. 46 of [A/CN.9/WG.I/WP.114](#)) and replaced the phrase “which might raise concerns” with the current “Permitting ... of an UNLLO” for improved clarity of the text.

<sup>63</sup> The Secretariat has replaced “UNLLO form” with “legal form of the UNLLO” to highlight that concerns raised would be in respect to UNLLOs generally, and not to one particular business.

43. In order to preserve the simplicity of the UNLLO, however, this Legislative Guide leaves States the option to permit only natural persons to become members of an UNLLO.<sup>64</sup>

**Recommendation 7:<sup>65</sup> The law should:**

**(a) Provide that an UNLLO must have at least one member from the time of its formation [until its dissolution]; and**

**(b) Specify whether only natural persons or also legal persons are permitted to be members of an UNLLO.**

44. In order to provide legal certainty as to when the UNLLO comes into existence, the Legislative Guide recommends that an UNLLO should be formed once it is registered with the business registry. Through formation,<sup>66</sup> the UNLLO acquires its essential attributes, including its legal personality, and limited liability for its members. In the interest of predictability and transparency of registration, it is highly desirable that States specify the moment at which the registration of the business is effective.<sup>67</sup> In keeping with international best practices, as outlined in the UNCITRAL Legislative Guide on Key Principles of a Business Registry (the “UNCITRAL Business Registry Guide”), the State may wish to specify that legal existence is conferred upon the UNLLO either at the time of the entry of the information on business registration into the registry record or when the application for registration is received by the registry.<sup>68</sup>

45. Regardless of the system used to register an UNLLO (electronic, paper-based or a mixed business registry), upon fulfilling the necessary requirements, the UNLLO should receive a notice of registration from the designated State authority. In keeping with the recommendations of the UNCITRAL Business Registry Guide and in order to accommodate the simple nature of the UNLLO, issuance of the notice of registration should be as fast and as streamlined as possible.<sup>69</sup>

**Recommendation 8: The law should provide that the UNLLO is formed once it is registered.<sup>70</sup>**

46. Depending on the type of business entity being created, States typically require different types and amounts of information to be submitted for valid formation. As a

<sup>64</sup> At its thirty-first session, the Working Group agreed to include in para. 55 of [A/CN.9/WG.1/WP.112](#) a discussion on the advantages and drawbacks of an UNLLO membership granted to a legal person. The Secretariat has implemented that decision in paras. 41 and 42 of the current text (para. 28, [A/CN.9/963](#)). Moreover, para. 43 (para. 55 of [A/CN.9/WG.1/WP.112](#)) has been redrafted for consistency with revised rec. 7(b).

<sup>65</sup> At its thirty-first session the Working Group agreed to redraft rec. 7 to better address States’ concerns of legal persons being members of an UNLLO and to divide the recommendation into two (para. 27, [A/CN.9/963](#)). The Working Group may wish to note that it agreed to postpone consideration of a proposal to remove the phrase “until its dissolution” in rec. 7(a) to a later stage (para. 29, [A/CN.9/963](#)). The Working Group may also wish to consider whether rec. 7(a) could be redrafted along the lines of: “Provide that an UNLLO must have at all times at least one member” to better clarify the requirements for the continuity of existence of the UNLLO. See also footnote 142, *infra*.

<sup>66</sup> The Secretariat has revised the opening sentences of this paragraph (para. 56 of [A/CN.9/WG.1/WP.112](#)) for consistency with the revised rec. 8 (para. 31, [A/CN.9/963](#)).

<sup>67</sup> See the UNCITRAL Business Registry Guide, paras. 142 ff.

<sup>68</sup> The Secretariat has modified this paragraph (para. 56 of [A/CN.9/WG.1/WP.112](#)) for consistency with redrafted rec. 8 and the UNCITRAL Business Registry Guide (para. 31, [A/CN.9/963](#)).

<sup>69</sup> The Secretariat has deleted para. 58 of [A/CN.9/WG.1/WP.112](#) for consistency with redrafted rec. 8 and in keeping with the decision of the Working Group at its thirty-first session that the discussion on the registration of the UNLLO should not focus on the different methods to administer business registration but rather include references to the UNCITRAL Business Registry Guide (para. 32, [A/CN.9/936](#)).

<sup>70</sup> The Secretariat has revised the text of the recommendation as requested by the Working Group at its thirty-first session (para. 31, [A/CN.9/963](#)).



reflection of the intended simplicity of the UNLLO, the information required for the formation of the UNLLO should be limited to the minimum necessary for its establishment and operation, as well as for the protection of third parties. In addition, recommendation 9 respects the principle that it should be as simple as possible for an MSME to provide the required information to the business registry so as to avoid creating unnecessary burdens and to encourage compliance with the law.

47. The minimum mandatory information to be submitted for the formation of the UNLLO pursuant to recommendation 9 includes the name of the UNLLO as well as the address at which the business is to be deemed to receive correspondence.<sup>71</sup> Where the business does not have a standard form address, a precise description of its geographic location should be provided instead of the business address.<sup>72</sup> The business address or geographic location of the UNLLO would be used for service or mailing purposes.<sup>73</sup>

48. This Legislative Guide does not require evidence of a member's identity for the formation of the UNLLO, but requires evidence of the identity of each person who manages the business. If the business is exclusively managed by all of its members (see paras. 70–73), the effect of recommendation 9(c) will be that the information on the identity of each member must be included, since each member would be a manager of the UNLLO. If the business is managed by one or more designated managers, only information on the identity of each designated manager must be included, whether or not the managers are members of the UNLLO. Requiring the UNLLO to disclose the identity of each person managing the business provides greater transparency to State authorities and third parties dealing with the UNLLO. Information on the residential address of each of those persons is, however, not required for the formation of the UNLLO since this information is not essential for the protection of third parties. For that purpose, as well as for State monitoring of the UNLLO management, the business address of the UNLLO should be sufficient. Moreover, the business address of the UNLLO can also function as the official correspondence address of the persons managing the UNLLO.<sup>74</sup>

49. Depending on the domestic context and legal traditions, States might require other information in addition to that listed in recommendation 9. For example, information on the identity of the founding members of the UNLLO, the members' share of the UNLLO, the authority to represent it and any limitations on the power of managers to bind the UNLLO might be considered of particular relevance by some States for the valid formation of an UNLLO.<sup>75</sup> In the case of an MSME, as most UNLLOs would be, States, however, should remain mindful that requesting complex and extensive information may discourage a business from registering.<sup>76</sup> States may also leave it open to the UNLLO to include any additional information deemed appropriate, in particular if such information can assist it in accessing credit or attracting investors.<sup>77</sup>

<sup>71</sup> The Secretariat has rephrased the final clause of this sentence for improved consistency with the UNCITRAL Business Registry Guide.

<sup>72</sup> See also rec. 21 of the UNCITRAL Business Registry Guide.

<sup>73</sup> The Secretariat has deleted the final sentence of this paragraph (para. 60 of [A/CN.9/WG.1/WP.112](#)) for consistency with the new draft of rec. 9.

<sup>74</sup> The Secretariat has revised this paragraph (para. 61 of [A/CN.9/WG.1/WP.112](#)) for greater clarity further to the changes in the terminology agreed by the Working Group at its previous sessions and for improved consistency with the terms used in the UNCITRAL Legislative Guide on a Business Registry.

<sup>75</sup> The Secretariat has added this discussion on additional information the States might consider requiring for the valid formation of an UNLLO, as agreed by the Working Group at its thirty-first session (para. 41, [A/CN.9/963](#)).

<sup>76</sup> The Secretariat has added this sentence (“In the case of ... from registering”) to stress the importance of a simple and straightforward registration process addressing the needs of MSMEs. See also the UNCITRAL Business Registry Guide on this.

<sup>77</sup> The Secretariat has moved the final sentence of para. 46 (para. 50 of [A/CN.9/WG.1/WP.114](#)) here for consistency.

50. The limited scope of information requirements under the Legislative Guide should be sufficient to meet international standards on disclosure of beneficial ownership.<sup>78</sup> These information requirements<sup>79</sup> should thus assuage any concerns that the UNLLO legal form could be misused for illicit purposes, including money-laundering and terrorist financing. Such an approach also strikes an appropriate regulatory balance, since it provides sufficient legal and commercial certainty for the State and for the protection of third parties dealing with the UNLLO.<sup>80</sup>

51. Regardless of the different types and amounts of information to be submitted for formation, States may wish to ensure that their business registration law requires any changes to information initially required pursuant to recommendation 9 to be updated with the business registry. Recommended methods for keeping information current are set forth in the UNCITRAL Business Registry Guide.<sup>81</sup>

52. For transparency and the protection of third-parties, most States provide that all registered information should be publicly available unless it is protected by the State's domestic law.<sup>82</sup> Consistent with this approach, the Guide thus takes the view that the information required for the formation of the UNLLO should be publicly available. That information would at least include the requirements listed in recommendation 9 below. Since the UNLLO must be registered in order to be formed, that information will be disclosed through publication on the business registry.<sup>83</sup>

<sup>78</sup> Financial Action Task Force (FATF) Recommendation 24 in respect of transparency and beneficial ownership of legal persons encourages States to conduct comprehensive risk assessments of legal persons and to ensure that all companies are registered in a publicly available company registry. The basic information required is: (a) the company name; (b) proof of incorporation; (c) legal form and status; (d) the address of the registered office; (e) its basic regulating powers; and (f) a list of directors. In addition, companies are required to keep a record of their shareholders or members. See International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, Part E on Transparency and Beneficial Ownership of Legal Persons and Arrangements (<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>). In addition, it should be recalled that business entities, in order to conduct activities, usually must open bank accounts that require the submission of taxation and other identification numbers, and financial institutions may remain the most suitable parties to prevent and combat money-laundering and other illicit activities. For consideration of these issues by the Working Group, see paras. 27 and 41 of A/CN.9/800, and paras. 47 to 55 of A/CN.9/825, as well as information contained in paras. 26 to 32 of A/CN.9/WG.1/WP.82 and paras. 21 and 26 of A/CN.9/WG.1/WP.89.

<sup>79</sup> See also recs. 26 and 27 on record-keeping, inspection and disclosure of UNLLO information to its members.

<sup>80</sup> Further to the request of the Working Group at its thirty-first session, the Secretariat has deleted para. 63 of A/CN.9/WG.1/WP.112 (para. 41, A/CN.9/963).

<sup>81</sup> The Secretariat has added this paragraph to fill a gap in the Legislative Guide as to the importance of maintaining current the information required for the existence of the UNLLO and to ensure consistency with other parts of the Guide (see para. 75 below) where reference is made to the need to update that information. No separate recommendation has been drafted as such recommendations appear in Chapter V of the UNCITRAL Business Registry Guide.

<sup>82</sup> See recommendation 35 of the UNCITRAL Business Registry Guide and its attendant commentary (paras. 176 to 183).

<sup>83</sup> Mindful of its previous deliberations that the question of what information should be required for the valid formation of the UNLLO should be considered separately from the question of what information should be made public (para. 52, A/CN.9/895; and para. 40, A/CN.9/963), at its thirty-second session the Working Group supported a proposal to create a new section on information of the UNLLO that is to be made public for the benefit of third parties (para. 42, A/CN.9/968). Given that such a recommendation would be more applicable to business registration law, and given the commentary to rec. 35 on public availability of information in the UNCITRAL Business Registry Guide, the Secretariat did not create a separate recommendation for inclusion in this Guide.

**Recommendation 9: The law should keep the information required for the formation of the UNLLO to a minimum. Such information should include:**<sup>84</sup>

- (a) The name of the UNLLO;
- (b) The business address or, when the business does not have a standard form address,<sup>85</sup> precise geographical location of the UNLLO; and
- (c) The identity of each person who manages the UNLLO.<sup>86</sup>

### C. Organization of the UNLLO

53. As noted above in respect of recommendation 1 (see paras. 19, 21 and 23), freedom of contract should be the guiding principle in establishing the internal organization of the UNLLO. As a consequence of that principle, the operation of the UNLLO is governed by the agreement of its members, except for those cases in which the law is mandatory and cannot be modified. The provisions that are mandatory are those that establish the necessary legal framework of the UNLLO and provide legal certainty, or those that are necessary to protect the rights of the UNLLO and of third parties dealing with the UNLLO. When the organization rules are silent on a non-mandatory issue, the default provisions in the Legislative Guide are intended to fill any gap.

54. In order to manage the UNLLO fairly, effectively and transparently, members may wish to adopt rules at least in respect of the following issues:

- (a) Maintenance of timely records of the members' decisions<sup>87</sup> as well as the form in which those records should be maintained;
- (b) Any requirement in respect of members' meetings, including:
  - (i) Their frequency and location, as well as any limitation thereon;
  - (ii) Any requirement regarding who can call a meeting;
  - (iii) The means by which a meeting may be held, including whether it may be held by technological means or by written consent;
  - (iv) Any notice period required prior to the holding of a meeting;
  - (v) The form of any notice required for a meeting (for example, whether it must be in writing), and the information (if any) that should be attached to the notice (for example, the UNLLO's financial information); and
  - (vi) Whether waiver of any required notice is permitted and the form that waiver may take;
- (c) Any deviations from the default voting requirements in recommendations 11 and 13; and<sup>88</sup>

<sup>84</sup> The Secretariat has amended the chapeau of rec. 9, further to a decision of the Working Group at its thirty-first session (paras. 33 and 37, [A/CN.9/963](#)).

<sup>85</sup> The Secretariat has added the phrase "when ... form address" for greater clarity of rec. 9(b) and consistency with the UNCITRAL Business Registry Guide.

<sup>86</sup> The Secretariat has deleted rec. 9(c) in [A/CN.9/WG.I/WP.112](#) and replaced "name" with "identity" in new rec. 9(c) (former rec. 9(d)) as agreed by the Working Group at its thirty-first session (para. 41, [A/CN.9/963](#)). Further, the Secretariat has replaced the term "manager" with "person ... UNLLO" for improved clarity.

<sup>87</sup> The Secretariat has deleted "both inside and outside of the ordinary course of business of the UNLLO" to reduce redundancies in the text.

<sup>88</sup> The Secretariat has relocated para. 54 (para. 73 of [A/CN.9/WG.I/WP.112](#)) in the commentary to rec. 10 for greater consistency of the text. The Secretariat has also revised the paragraph for improved readability.

(d) Criteria to resolve situations in which a decision cannot be reached, whether the decision falls within the purview of the managers or the members.<sup>89</sup>

55. This legislative guide leaves States the option to permit the members of the UNLLO to establish organization rules orally or through a course of conduct, or to require the members to record their organization rules, whether in writing or in electronic form or by any other appropriate technological means.<sup>90</sup> Broad flexibility for the form of the organization rules recognizes that for many MSMEs there may be no formal written agreement on the organization rules, and that, in such cases, States may wish to enable members to rely on other agreement forms.

56. It may be in the best interests of members to record the organization rules of the UNLLO, since oral agreements and agreements implied by conduct are more difficult to prove in the event of a dispute. It should be noted, however, that when amendments by conduct to recorded organization rules occur in practice, States would need to rely on other laws for resolution of the evidentiary disputes which may nonetheless arise.

57. A requirement for an UNLLO to document its rules would assist in record-keeping, and provide evidence for creditors and other interested third parties to make informed decisions about who they wish to do business with. Recorded organization rules of UNLLO would further mitigate the risk that the UNLLO be misused for illicit purposes, such as money-laundering. A requirement for a single-member UNLLO to document its rules will still provide for the internal governance of the UNLLO.

58. However, States that consider requiring recorded organization rules should balance the need for transparency and traceability of UNLLO's operations against the cost imposed on the members, and should take into account factors such as technological and financial capabilities, literacy rates, and model forms.

59. The Legislative Guide does not require that an UNLLO's organization rules be made public. This approach protects the privacy of members and adds to the ease of the UNLLO's operations by avoiding the need to file amendments with the business registry each time a change is made to the organization rules (see para. 51 above). When an UNLLO's organization rules include provisions that modify the default provisions applicable to the UNLLO, however, notice of such changes to third parties dealing with the UNLLO is required in order to be effective against them (see para. 80 and rec. 16 below).<sup>91</sup> To accommodate the different legal traditions and practices of the States, however, this Guide leaves States the option to decide how that information should be disclosed to the third parties.<sup>92</sup>

<sup>89</sup> At its thirty-second session, the Secretariat was suggested to provide guidance in rec. 15(b) (rec. 14(b) in [A/CN.9/WG.1/WP.114](#)) on instances in which a disagreement between managers was equal (para. 41, [A/CN.9/968](#)). The Secretariat has placed the suggestion in the commentary to rec. 10 as a matter that should be considered by the members in their organization rules.

<sup>90</sup> At its thirty-second session, the Working Group agreed that a requirement to record organization rules should be left to States to decide, and that the commentary to rec. 10 should reflect the policy choice that States would need to make by considering advantages and disadvantages of such a requirement. It was further agreed that the recommendation should be redrafted in that manner (para. 31, [A/CN.9/968](#)). The Secretariat has redrafted the recommendation and made editorial adjustments to the commentary to reflect this decision.

<sup>91</sup> The Secretariat has added this sentence ("when an UNLLO ... (rec. 16 below)") to the paragraph to clarify that variation of default provisions must always be disclosed in order to have legal effect against third parties.

<sup>92</sup> At its thirty-second session, the Working Group agreed to retain the term "proper notice" in rec. 16 (rec. 15 in [A/CN.9/WG.1/WP.114](#)), but that it would be for States to define how to provide "proper notice" (para. 43, [A/CN.9/968](#)), consistent with this approach, the Secretariat has left the determination of how to disclose organization rules to third parties up to the enacting State. See also, *infra*, footnote 115.

**Recommendation 10: The law should:**

(a) Indicate, where a member or members of the UNLLO adopt organization rules, what form these rules may take; and

(b) Provide that the organization rules may address any matters relating to the UNLLO insofar as they do not contradict the mandatory provisions set out in recommendations 1, 2, 3, 4, 6, 7, 8, 9, [16],<sup>93</sup> 17, 20, 21, 24(c), 26 and 27 [to be further determined] in this Guide.

**D. Membership in an UNLLO<sup>94</sup>**

60. Membership in an UNLLO entitles a member to exercise certain rights regardless of whether or not the member is a manager of the UNLLO. Those rights usually include: rights to make decisions on certain aspects of the UNLLO and to access information on its operations and finances, and financial rights. With regard to decision-making rights, the Guide recommends that, at least, the members retain authority on the following matters that affect the structure or existence of the UNLLO:

- (a) Any amendment of the organization rules (rec. 11);
- (b) The management structure of the UNLLO and any modifications thereof (recs. 12 and 13);
- (c) Determination of the member's share of and contribution to the UNLLO (rec. 18);
- (d) Restructuring or conversion of the UNLLO (rec. 23); and
- (e) Dissolution and winding-up of the UNLLO (rec. 24 (a) and (b)).

61. Since the organization rules set out the essential procedures for the operations of the UNLLO, their amendment should require the unanimous consent of the members, while decisions on the matters listed in subparagraphs (b) to (e) should require a qualified majority. Unless otherwise agreed in the organization rules, such decision-making rights are equally enjoyed by all members. When an UNLLO is managed by all of its members exclusively (see rec. 13), it would be necessary to differentiate the decision-making rights as a member from those as a manager.<sup>95</sup>

62. The list of matters in paragraph 60 above is not exhaustive and the Legislative Guide leaves States the option to include additional matters to better accommodate their domestic policies and legal traditions. Consistent with the principle of freedom of contract that is at the basis of the UNLLO, the Legislative Guide also permits the members to include in the organization rules additional matters over which they would retain decision-making authority.<sup>96</sup>

<sup>93</sup> The Secretariat has placed the reference to rec. 16 in square brackets in light of its suggestion that such recommendation should no longer be considered mandatory and thus removed from the list included in rec. 11. See footnote 115, *infra*.

<sup>94</sup> At its thirty-second session, the Working Group agreed that a new section on the rights and consequences of being a member of the UNLLO should be drafted (paras. 38, 42 and 46 of [A/CN.9/968](#)). The Secretariat has placed this new section here as it seems logical to address this topic before discussing the management of the UNLLO. The Working Group might wish to consider whether this is an appropriate placement and whether the order of the sections that follow should be reorganized.

<sup>95</sup> Pursuant to a request at the Working Group's thirty-second session (para. 39, [A/CN.9/968](#)), the Secretariat has provided a list of "extraordinary" matters (paras. 60 and 61 above) that would need to be resolved by a qualified majority or unanimity of the members. The list and the voting requirements remain subject to the Working Group's consideration.

<sup>96</sup> The Secretariat has drafted this paragraph to be consistent with the current default provision in rec. 15, which provides that managers are responsible for all matters that are not retained by the members of the UNLLO.

63. In addition to decision-making rights, members are entitled to receive information on the operation of the UNLLO and its financial status (see paras. 120 to 122 and recs. 26 and 27) as well as to inspect the UNLLO records. Members may also bring derivative actions on behalf of the UNLLO (see para. 83) to protect it against illicit behaviour of the managers or members.

64. As in any other corporate structure, a share of an UNLLO also creates financial rights for the members, which include the members' rights to partake in the profits and assets<sup>97</sup> of the UNLLO during the existence and after dissolution and liquidation of the business. Moreover, a member can transfer its financial rights in the UNLLO should it decide to withdraw from the business entity (rec. 22).

65. UNLLO members must also comply with certain obligations. Members must make the agreed contributions to the UNLLO, partake in its losses and reimburse any undue distribution made to them by the UNLLO (recs. 19 to 21). As noted above (see para. 32), members should also refrain from any abuse of the UNLLO legal form and any other rights granted to them. These are the minimum obligations required to members, in order to ensure the regular operations of the UNLLO. Members are, however, free to establish additional obligations in their organization rules consistent with the features of the business.

**Recommendation 11: The law should:**

**(a) Specify the decisions to be taken by the members. At a minimum, such decisions should include:**

**(i) Decisions to modify the organization rules, which are to be taken by unanimity; and**

**(ii) Decisions on restructuring and conversion, dissolution and winding-up, which are to be taken by a qualified majority;**

**(b) Provide that the organization rules specify any other decision to be taken by the members, which are to be taken by majority unless otherwise agreed in the organization rules; and**

**(c) Establish that members of the UNLLO have equal rights to decide on the matters listed in subparagraphs (a) and (b) unless otherwise agreed in the organization rules.**

## E. Management of the UNLLO

66. The fact that an UNLLO will likely have a relatively small number of members who will be interested in substantial participation in the management and operation of the business will affect its management structure.<sup>98</sup> Appointing an external manager (which is common in publicly-traded companies) to administer the UNLLO may not fit the governance needs of the members, particularly when the UNLLO is a micro or small business. Recommendation 12 thus makes an UNLLO exclusively managed by all of its members the default approach.

67. However, the default provision may not be suitable for every UNLLO. For example, there may be instances where a member is not willing or eligible to serve as a manager (see para. 69 below).<sup>99</sup> Therefore recommendation 12 permits members of an UNLLO to agree to a management structure where not all members act as managers. In such instances, the UNLLO will be managed by a designated manager.

<sup>97</sup> The Secretariat suggests including the right to assets of the UNLLO in the Legislative Guide.

<sup>98</sup> The Secretariat has slightly adjusted the opening sentence of the paragraph (para. 59 of [A/CN.9/WG.I/WP.114](#)) for improved readability.

<sup>99</sup> The Working Group may wish to provide an additional default approach for instances in which not all members are legally eligible to serve as managers, as rec. 12 currently only applies to deviations from the default approach by members' agreement.

Alternative management structures may involve management by: (i) only some of the UNLLO members; (ii) only non-member managers; (iii) a combination of some of the UNLLO members and non-member(s); or (iv) all of the UNLLO members and non-member(s). Designated managers will manage the ordinary course of business of the UNLLO pursuant to recommendation 15.

68. Where there is only one member of an UNLLO, that member will be the manager, unless the member appoints a manager.

69. Managers of an UNLLO, regardless of whether the UNLLO is managed by all of its members exclusively or by one or more designated managers, must meet the legal requirements (e.g., minimum age, absence of disqualification) established under the domestic law of the State for those in a management role. In this respect, the law should also specify whether a legal person that has been granted membership in an UNLLO can be appointed as a manager (see para. 42 above). In addition to the requirements established under the law of the State, the organization rules may prescribe other qualifications a manager of the UNLLO must meet.<sup>100</sup>

**Recommendation 12: The law should provide that the UNLLO is managed by all of its members exclusively, unless it is indicated in the organization rules that the UNLLO shall appoint one or more designated managers.<sup>101</sup>**

#### 1. When the UNLLO is managed by all of its members exclusively

70. When the UNLLO is managed by all of its members exclusively, the members will have joint and equal management and decision-making rights on matters concerning day-to-day operations of the UNLLO, unless they agree otherwise in the organization rules.<sup>102</sup>

71. Further, unless there is agreement to the contrary, differences that arise between members as to managerial decisions would be resolved by a majority of its members. Such decisions would likely include: opening and closing bank accounts, disposing of assets owned by the UNLLO, accessing credit for the UNLLO, buying and selling equipment and hiring employees. As noted above (see paras. 60 and 62), decisions that affect the UNLLO existence or structure would not be considered managerial in nature, and would therefore require the approval by the members in their capacity as members, and not in their capacity as managers.

72. In this regard, it should be noted that the removal of management duties of one member in an UNLLO managed by all of its members exclusively is a non-managerial decision, as it would affect the management structure of the UNLLO. Such a decision would thus be taken by the members themselves (see paras. 60 above and 74 below). The member whose management duties have been removed would retain the right to participate in decision-making as a member (see rec. 11).

73. As a practical matter, in an UNLLO managed by all of its members exclusively it might be difficult to differentiate between decisions made as members or as managers (see also para. 61 above). Recommendation 11 therefore presents a list of decisions that require member action, whereas recommendation 13 reflects the default

<sup>100</sup> The Secretariat has modified the commentary to rec. 12 to make it align with the changes in the recommendation. Further, in keeping with a decision of the Working Group at its thirty-first session, the Secretariat has added a new paragraph, para. 69 (para. 62 in A/CN.9/WG.1/WP.114), on the approach to follow in establishing the requirements to be met in order to be a manager (para. 47, A/CN.9/963).

<sup>101</sup> The Secretariat has redrafted the recommendation pursuant to a decision taken by the Working Group at its thirty-second session (para. 34, A/CN.9/968).

<sup>102</sup> The Secretariat has added the phrase “on matters ... operations of the UNLLO” in keeping with a decision of the Working Group at its thirty-second session that it should be clarified in the commentary that the focus was on internal management decisions and not on the external representation of the UNLLO (para. 36, A/CN.9/968).

approach to decision-making of the members as managers in an UNLLO managed by all of its members exclusively.<sup>103</sup>

**Recommendation 13: The law should provide that when the UNLLO is managed by all of its members exclusively and unless otherwise stipulated in the organization rules:**

**(a) Differences among members on matters concerning day-to-day operations of the UNLLO should be resolved by a majority decision of the members;<sup>104,105</sup> and**

**(b) The members of the UNLLO have joint and equal rights to decide on matters concerning the regular operations of the UNLLO.<sup>106</sup>**

## 2. When the UNLLO is managed by one or more designated managers

74. As noted above (see para. 67), members of an UNLLO may agree on a management structure that differs from the default provision in recommendation 12. When members agree on an alternative management structure, the organization rules should include rules for the appointment and removal of a designated manager. In the absence of such rules,<sup>107</sup> recommendation 14 provides that such decisions should be made by a majority of the members. A designated manager could be an internal member of the UNLLO, provided that the management structure is not one in which all members serve as managers exclusively.

75. Should a designated manager become unavailable (through death or otherwise), the members could<sup>108</sup> be required to appoint another manager under the terms of the organization rules, and to list the identity of the manager pursuant to recommendation 9(c) (see para. 48 above). Appointing another manager could be important to ensure continuity of the regular operations of the UNLLO.<sup>109</sup>

**Recommendation 14: The law should provide that, unless otherwise agreed in the organization rules, one or more designated manager(s) may be appointed<sup>110</sup> and removed by a majority decision of the members.**

76. As noted above (see paras. 60 and 62), even when members of the UNLLO appoint one or more designated manager(s) to manage the business, members will still retain the authority to decide on certain matters that are outside the daily operation of the business and may affect its existence, structure or the membership itself. This legislative guide enumerates certain matters that should be decided by the

<sup>103</sup> The Secretariat has modified paras. 71 to 73 above (para. 64 of [A/CN.9/WG.1/WP.114](#)) for consistency with the approach taken in the new Section D on membership in an UNLLO.

<sup>104</sup> At its thirty-second session the Working Group agreed that differences in ordinary management decisions should be resolved by a majority of members by number (para. 37, [A/CN.9/968](#)).

<sup>105</sup> In keeping with deliberations of the Working Group at its thirty-second session, the Secretariat has removed the phrase “ordinary course of business” from the recommendation (para. 39, [A/CN.9/968](#)). In addition, it has deleted rec. 13 (c) (rec. 12 (c) in [A/CN.9/WG.1/WP.114](#)), since decisions on matters outside the day-to-day operations of the UNLLO require members’ action and are addressed in rec. 11. See also *supra*, footnote 95.

<sup>106</sup> The Secretariat has reversed the order of this recommendation to mirror the structure of new rec. 11.

<sup>107</sup> The Secretariat has replaced “agreement” with “rules” in keeping with a suggestion of the Working Group at its thirty-first session (para. 75, [A/CN.9/963](#)).

<sup>108</sup> The Secretariat has replaced “would” with “could” in keeping with a suggestion of the Working Group at its thirty-first session (para. 75, [A/CN.9/963](#)).

<sup>109</sup> The Secretariat has replaced the phrase “amendments ... be made” in para. 75 (para. 83 of [A/CN.9/WG.1/WP.112](#)) with the current drafting, further to a decision of the Working Group at its thirty-first session that discussions on managers’ rights to amend the formation document should not be included in the commentary (paras. 34 and 41, [A/CN.9/963](#)).

<sup>110</sup> The Secretariat has replaced “elected” with “appointed” further to a suggestion of the Working Group at its thirty-first session (para. 75, [A/CN.9/963](#)).



members. To facilitate the operation of the UNLLO, it would be desirable for the organization rules to specify all other matters that are retained for decision-making by members (see para. 62, above). Typical managerial decisions are described in paragraph 71, above, but this Guide takes the view that when the organization rules are silent, the default provision of recommendation 15(a) will apply, which provides managers with the authority to make decisions independent of involvement of the members.<sup>111</sup>

77. The organization rules should also determine how disputes among managers on matters within their authority should be resolved. In the absence of such rules, recommendation 15(b) provides that disputes should be decided by a majority of the managers. The recommendation, however, does not address any deadlock that might occur when an equal number of managers fail to reach a decision. As noted above (see above, para. 54 (d)), it is desirable that criteria to resolve situations in which a decision cannot be made should be included in the organization rules.<sup>112</sup>

**Recommendation 15: The law should provide that when the UNLLO is managed by one or more designated manager(s):**

**(a) Managers are responsible for all matters that are not retained by the members of the UNLLO pursuant to [this law] or the organization rules; and**

**(b) Disputes among managers should be resolved by a [majority] decision of the managers, unless otherwise stipulated in the organization rules.<sup>113</sup>**

### 3. Provisions applicable to all managers regardless of the management structure of the UNLLO

78. Regardless of whether an UNLLO is managed by all of its members exclusively or by one or more designated managers, the Legislative Guide applies certain provisions, such as the power to act on behalf of the UNLLO and fiduciary duties, to all managers. This approach is reflected in recommendations 16 and 17.

79. Each manager of the UNLLO has the authority to act on behalf of the UNLLO and legally bind it. Restrictions may be agreed upon in the organization rules in respect of the extent of each manager's authority<sup>114</sup> to bind the UNLLO (for example, only up to a certain monetary threshold), or to vary the default provision that each manager has the authority to legally bind the UNLLO. Such modifications of the default provisions will be effective between the members of the UNLLO.

80. However, such restrictions or variations will not be effective against third parties dealing with the UNLLO unless those third parties have notice of that restriction or variation of the manager's authority. If third parties dealing with the UNLLO do not have notice of any limitation that the organization rules have placed

<sup>111</sup> At its thirty-second session, the Working Group agreed to include a list in the section on designated managers similar to the one that was included in the new recommendation on the rights of members (para. 41, [A/CN.9/968](#)). Given that it would be unlikely to subject managerial decisions to heightened voting standards, the Secretariat has suggested including the list only in rec. 11.

<sup>112</sup> At its thirty-second session, a suggestion was made to provide guidance on instances in which the disagreement between managers was equal in rec. 15(b) (rec. 14(b) in [A/CN.9/WG.1/WP.114](#)) (para. 41, [A/CN.9/968](#)). The Secretariat suggests that this matter should be dealt with in the organization rules of the UNLLO and has thus drafted subpara. 54 (d) (Section C Organization) to account for such instances, see also supra footnote 89. In addition, the Secretariat has added the sentences "The recommendation ... organization rules" in para. 77 above.

<sup>113</sup> The Secretariat drafted rec. 15 (rec. 14 in [A/CN.9/WG.1/WP.114](#)) and its attendant commentary pursuant to deliberations of the Working Group at its thirty-first session in order to consider instances where the UNLLO would be managed by designated managers (paras. 62 to 64, [A/CN.9/963](#)). The Working Group may wish to note that for the reasons identified supra, in footnote 29, "this law" has been placed in brackets.

<sup>114</sup> The Secretariat has replaced "to which ... the UNLLO" in para. 80 of [A/CN.9/WG.1/WP.112](#) with "each manager's authority" for improved clarity of the text.

on the authority of a manager, the UNLLO will nonetheless be bound by a decision of that manager, regardless of whether that decision exceeds the manager's authority as limited by the organization rules. This legislative guide leaves to State law to determine how notice to third parties should be provided (in this regard, see also para. 59, above).<sup>115</sup>

**Recommendation 16: The law should provide that each manager individually has the authority to bind the UNLLO unless otherwise agreed. Restrictions upon that authority will not be effective against third parties dealing with the UNLLO<sup>116</sup> without proper notice.**

81. The authority of any manager<sup>117</sup> to represent and bind the UNLLO must be contained within broad standards of conduct that reduce the risk of managers acting opportunistically and encourage them to promote the welfare of the UNLLO and, indirectly, its members. Fiduciary duties offer protection against a manager's pursuit of personal interest and any grossly negligent behaviour on its part.<sup>118</sup> Such duties may be separated into a duty of care and a duty of loyalty, including a duty to refrain from self-dealing transactions, personal use of business assets, usurpation of business opportunities, and competition with the UNLLO. While the Legislative Guide is not modelled on any specific legal tradition, the inclusion of such duties tends to be a standard feature of business associations law; for example, fiduciary duties are found in many of the simplified corporate forms resulting from States' reforms in this domain. This Guide notes that States may have an understanding of fiduciary duties that range beyond the duties listed in recommendation 17. It would be up for the State to decide to include additional mandatory duties, including creating fiduciary duties to the UNLLO of members who are not managers.<sup>119</sup>

82. When managers, in the performance of their official duties, have made a good faith decision they believed to be in the best interest of the UNLLO, claims of breach of fiduciary duties should not be made ex post facto to subject the business judgment to criticism.<sup>120</sup>

83. Legal claims against managers in breach of their fiduciary duties may be brought directly before a court or by way of an alternative dispute settlement mechanism (see rec. 28). Generally, it will be the UNLLO itself, rather than an individual member, that would have a cause of action for a breach of a fiduciary duty by a member or manager. Ordinarily, the manager would be responsible for bringing an action on behalf of the UNLLO. However, in instances in which the manager has breached its own fiduciary duty, a member should have the right to bring a derivative claim on

<sup>115</sup> At its thirty-second session, the Working Group agreed to retain the term "proper notice" in rec. 16 (rec. 15 in [A/CN.9/WG.1/WP.114](#)), but that it would be for States to define how to provide "proper notice" (para. 43, [A/CN.9/968](#)), see also supra, footnote 92. Given that the commentary to rec. 16 permits members of the UNLLO to deviate from the default provision, the Secretariat has added the phrase "unless otherwise agreed." in the text of the recommendation. The Working Group may wish to remove rec. 16 from the list of mandatory provisions.

<sup>116</sup> In keeping with proposals made at the thirty-first session of the Working Group, the Secretariat has deleted the phrase "in the ... business" between "UNLLO" and "without" (see Annex to [A/CN.9/963](#)) as well as in the attendant commentary.

<sup>117</sup> The Secretariat is using the phrase "any manager" to clarify that "manager" as used in rec. 16 would apply to all managers, regardless of the managerial structure of the UNLLO.

<sup>118</sup> The Secretariat has relocated this sentence ("Fiduciary duties ... its part") here from para. 82 (para. 75 of [A/CN.9/WG.1/WP.112](#)).

<sup>119</sup> At its thirty-second session the Working Group agreed to list a duty of care and duty of loyalty to the UNLLO in rec. 17 (rec. 16 in [A/CN.9/WG.1/WP.114](#)), leaving the possibility open for States to include additional mandatory duties (para. 44, [A/CN.9/968](#)). Rec. 17 and its attendant commentary have been adjusted accordingly.

<sup>120</sup> The Secretariat has reversed the clauses of this paragraph (para. 73 of [A/CN.9/WG.1/WP.114](#)) for improved clarity.

behalf of the UNLLO. In doing so, the member must fairly and adequately represent the other similarly situated members.<sup>121</sup>

84. The provision establishing a manager's duties to the UNLLO in recommendation 17 is mandatory and cannot be varied or eliminated by agreement. No internal agreement could eliminate or limit the liability of a manager: (a) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (b) for any transaction from which the manager derived an improper personal benefit.

85. Members could agree to include in their organization rules a provision that they owe fiduciary duties to each other.<sup>122</sup> Similarly, they could agree among themselves how to apportion liability or whether to forego limited liability protection.<sup>123</sup> Members can also agree that a manager must adhere to a standard that is higher than that established in recommendation 17.

86. Finally, members may specify in their organization rules that certain activities are permitted for managers which do not constitute a breach of the duties established in recommendation 17.<sup>124</sup> Permitting freedom of contract of the members to this extent could be useful in the context of UNLLOs, since it would allow members to derogate from a prescriptive corporate legal framework which may not be necessary, while still requiring appropriate protection for the UNLLO, its members and third parties dealing with it.

**Recommendation 17: The law should provide that any manager of the UNLLO owes a duty of care and a duty of loyalty to the UNLLO.**<sup>125</sup>

## F. Members' share of and contributions to the UNLLO

87. The UNLLO is not required to have legal capital upon registration, so it is not necessary for members to make contributions to it in order for it to exist.<sup>126</sup> 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. In this respect, the

<sup>121</sup> At its twenty-eighth session, the Working Group agreed to add in the commentary a paragraph on the enforcement of fiduciary duties that should include how legal claims can be brought individually and collectively against managers in breach, regardless of whether the claims were brought before a court or by way of alternative dispute resolution mechanism (para. 149, [A/CN.9/900](#)). For consistency, the Secretariat has moved this paragraph (para. 79 in [A/CN.9/WG.1/WP.114](#)) to follow the discussion on claims of breach of fiduciary duties. See also section M on Conflict resolution.

<sup>122</sup> At its thirty-second session, the Working Group reversed its previous deliberation (para. 147, [A/CN.9/900](#)) that the approach in the Legislative Guide should be one in which members owed each other fiduciary duties unless otherwise agreed in the organization rules (para. 44, [A/CN.9/968](#)). The Secretariat has implemented that deliberation.

<sup>123</sup> At its twenty-seventh session, the Working Group agreed to include reference to proportional liability and to consider adding reference to foregoing limited liability protection entirely (para. 36, [A/CN.9/895](#)). See also, *supra*, footnote 37.

<sup>124</sup> Similar approaches may be found in various legislative enactments in respect of fiduciary duties. For example, the United States Revised Uniform Limited Liability Company Act of 2006 clarifies the ability of members to define and limit the duties of loyalty and care that members owe to each other and to the business entity. See, also, the Delaware General Corporation Law, Section 102(b) (7), which allows the members to limit the duty of care by agreeing to eliminate or limit the personal liability of a manager to the business entity or its members in such cases.

<sup>125</sup> At its thirty-second session the Working Group agreed to: (a) only list a duty of care and duty of loyalty to the UNLLO in rec. 17 (rec. 16 in [A/CN.9/WG.1/WP.114](#)), leaving the possibility open for States to include additional mandatory duties, including fiduciary duties of members who were not managers (para. 44, [A/CN.9/968](#)); and (b) delete rec. 17(b) in light of the Working Group decision that members did not owe fiduciary duties to each other (see also, *supra*, footnote 122). The Secretariat has implemented those deliberations accordingly.

<sup>126</sup> The Secretariat has deleted the final sentence ("The UNLLO ... its operations") of this paragraph (para. 87 of [A/CN.9/WG.1/WP.112](#)) as agreed by the Working Group at its thirty-first session (para. 79, [A/CN.9/963](#)).

law should permit members maximum flexibility to decide upon the amount, type and timing of their agreed contributions to the UNLLO, including the flexibility to determine that members are not required to make contributions in order to be members of the UNLLO.<sup>127</sup>

88. In specifying in the organization rules the types of contributions that members of the UNLLO may make, members may wish to consider tangible and intangible property as well as other benefits to the UNLLO, including money, services performed, promissory notes, other binding agreements to contribute money or property and contracts for services to be performed. Although maximum flexibility with respect to contributions to the UNLLO is encouraged, in some cases, other laws of the enacting State may restrict the types of contribution that may be made. For example, in some States, the provision of services is not permitted as a contribution to the establishment of a business entity. In such cases, those restrictions should be specified in the law prepared on the basis of this legislative guide.<sup>128</sup>

89. The determination of the value of each non-monetary contribution should be left to the members of the UNLLO, as they are in the best position to determine that value. With this regard, it would be desirable for members of the UNLLO to provide the criteria on how to value non-monetary contributions in the organization rules.<sup>129</sup> Members wishing to set forth obligations concerning the accurate value of their respective contributions may include them in the organization rules. Any other mechanism, such as requiring an audit or other external valuation method, is likely to be too burdensome for MSMEs. It is recommended that the UNLLO maintains a record (see also recs. 26 and 27 below) of the amount, type and timing of contribution of each member to ensure that the rights of the members are respected.

90. When members have identified the respective values of their contributions in the organization rules, recommendation 18 provides a default provision that each member's share of the UNLLO will be determined in accordance with those respective values.<sup>130</sup>

91. In instances where members agree to make contributions to the UNLLO, but do not agree upon the value of the contributions, recommendation 18(a) provides a default provision that the value of contributions by each member should be deemed equal.

92. Consequently, when recommendation 18(b) is read together with recommendation 18(a), this Guide provides a default provision to state that a member's share of the UNLLO should also be deemed equal if members have not agreed on the value of their contributions. It would, however, be desirable that the members agree on the value of their contributions and on their share of the UNLLO to ensure transparency and facilitate the operation of the business. Such an agreement may also help prevent disputes among the members, as it provides certainty and may limit the potential for distrust.<sup>131</sup> It would be equally desirable that members reached

<sup>127</sup> The Secretariat has added the sentences "Members may ... of the UNLLO" to the paragraph to emphasize that making contributions to the UNLLO may not be necessary in order to become a member (para. 79, A/CN.9/963).

<sup>128</sup> The Secretariat has relocated this paragraph (para. 89 of A/CN.9/WG.1/WP.112) here, further to a decision of the Working Group at its thirty-first session as this would better illustrate the subject of non-monetary contributions (para. 80, A/CN.9/963).

<sup>129</sup> At its thirty-second session, the Working Group agreed that a discussion on how members of the UNLLO should value non-monetary contributions, should be left to the consideration of the members in their organization rules. The Secretariat has thus clarified this aspect in para. 89 above (para. 80 of A/CN.9/WG.1/WP.114) (para.49, A/CN.9/968).

<sup>130</sup> The Secretariat has included a sentence to state that a member's share of the UNLLO should correspond to its percentage of contribution to the UNLLO, as agreed by the Working Group at its thirty-first session (para. 81, A/CN.9/963).

<sup>131</sup> At its thirty-second session, the Working Group agreed that emphasis should be placed in the commentary on the value of members agreeing upon their share in order to reduce instances of the application of the default provisions. For a similar reason, it was agreed that the Guide should consider the case of new members joining the UNLLO after its formation and their

an agreement on the value of their contributions and on their share of the UNLLO when a new member joins the UNLLO after its formation. This would reduce instances of the application of the default provisions in recommendation 18(a) and (b) that may otherwise result in contributions and share being deemed equal and replace any agreement on contribution the members may have made at the formation of the UNLLO.

93. Given the “freedom of contract” principle that governs the Legislative Guide, members should also be permitted to agree on more complex ownership structures in their organization rules.<sup>132</sup>

**Recommendation 18: The law should provide that:**

**(a) Members of the UNLLO are permitted to agree upon contributions, if any, they make to the UNLLO, including their type, timing and value. When members have not agreed upon a value of their contributions, any contributions shall be deemed equal; and**

**(b) The members’ share of the UNLLO shall be in accordance with the value of their contributions, unless otherwise agreed in the organization rules.**<sup>133</sup>

## G. Distributions

94. In keeping with the general default approach of the UNLLO, the Legislative Guide provides not only that members will have an equal share of the UNLLO but also of any distributions made by it, unless they have otherwise agreed in their organization rules.

95. The members of the UNLLO may also agree on the type of distribution (for example, including cash or property of the UNLLO) as well as the timing of such distributions. It is advisable for States that do not permit non-monetary distributions to specify those restrictions in the UNLLO law.

**Recommendation 19: The law should provide that distributions are made to members in proportion to their respective share of the UNLLO as stated in the organization rules. When the member’s share of the UNLLO is not so stated, distributions by the UNLLO shall be made equally among its members.**<sup>134</sup>

96. Although the amount, type and timing of distributions may be subject to the members’ decision, the Legislative Guide includes mandatory provisions governing distributions aimed at protecting third parties dealing with the UNLLO. Accordingly, the members of the UNLLO cannot contract out of the rule prohibiting distributions which would violate either the cessation of payment test<sup>135</sup> set out in recommendation 20(a), or the balance sheet test set out in recommendation 20(b).

contributions (para. 48, [A/CN.9/968](#)). The Secretariat has implemented those deliberations in para. 92 above (para. 80 of [A/CN.9/WG.1/WP.114](#)).

<sup>132</sup> The Working Group agreed at its thirty-first session that given the scope of rec. 18 (rec. 17 in [A/CN.9/WG.1/WP.114](#)) reference to “classes and types of membership” was considered to be unnecessarily complicated. The Secretariat has thus deleted the phrase “including ... of membership” (para. 78, [A/CN.9/963](#)).

<sup>133</sup> Pursuant to a request at the Working Group’s thirty-second session (para. 47, [A/CN.9/968](#)) to consolidate rec. 18 (rec. 17 in [A/CN.9/WG.1/WP.114](#)), the Secretariat has condensed former rec. 17(c) of [A/CN.9/WG.1/WP.114](#) into a revised rec. 18 (a) and (b), bearing in mind that the prior recommendation attempted to address default provisions regarding both share and contributions.

<sup>134</sup> Given that rec. 18 provides for how shares should be allocated, the Secretariat suggests that rec. 19 (rec. 18 in [A/CN.9/WG.1/WP.114](#)) merely state the following: “The law should provide that distributions are made to members in proportion to their respective share of the UNLLO”.

<sup>135</sup> The Secretariat has replaced the term “insolvency test” (see [A/CN.9/WG.1/WP.99/Add.1](#)) with “cessation of payment test” for consistency with the UNCITRAL Legislative Guide on Insolvency Law (see Part two, Chapter I, Section B of that Guide).

Under the cessation of payment test, the UNLLO must still be able to pay its debts following the distribution, while the balance sheet test ensures that distributions can only be made if the UNLLO's remaining assets exceed its total liabilities.

97. This mandatory provision, in conjunction with the clawback provision in recommendation 21, is intended to protect third parties and creditors who are dealing with the UNLLO from any dissipation of the UNLLO's assets through improper distributions to its members.

98. In most cases, the UNLLO will be managed by all of its members exclusively, and so holding each member liable to return the amount of the improper distribution as indicated in recommendation 21 should act as an adequate disincentive against such distributions.<sup>136</sup> Where the UNLLO is managed by one or more designated manager(s), the duties set out in recommendation 17, with recommendations 20 and 21, should provide an adequate basis on which to find managers liable for any improper distributions they make.

**Recommendation 20: The law should prohibit distributions from being made to any member if upon giving effect to such distribution:**

**(a) The UNLLO would not be able to pay its debts as they become due in the ordinary course of business; or**

**(b) The UNLLO's total assets would be less than the sum of its total liabilities.**

99. In keeping with the rule on improper distributions established in recommendation 20, recommendation 21 permits the amount of any such distribution to be clawed back from each member who received that distribution, or any improper portion of a distribution. Such a rule is intended both to protect third parties dealing with the UNLLO and to disincentivize members from accepting improper distributions, which may leave the UNLLO insolvent.<sup>137</sup>

100. It should be noted that payments of reasonable compensation for services rendered<sup>138</sup> and for bona fide debts owed by the UNLLO to a member should not be considered distributions, and would thus not be subject to the clawback provision in recommendation 21.

101. In addition, as noted in paragraph 112 above, managers that make distributions in violation of one of the tests in recommendation 20 could also be held liable to the UNLLO.

**Recommendation 21: The law should provide that each member who received a distribution, or any portion thereof, made in violation of recommendation 20 is liable to reimburse the UNLLO for this distribution or portion thereof.**<sup>139</sup>

## H. Transfer of rights

102. As noted above (see para. 64, above), a member's share of an UNLLO entitles it to exercise financial rights to partake in the profits and losses of the UNLLO and to receive distributions.

<sup>136</sup> For consistency, the Secretariat has removed the reference to a lack of a specific provision holding managers liable for making improper distributions (para. 32 of [A/CN.9/WG.1/WP.99/Add.1](#)).

<sup>137</sup> The Secretariat has deleted "or with greater liabilities than assets" (see [A/CN.9/WG.1/WP.99/Add.1](#)) after "insolvent" to avoid redundancy with the term "insolvent".

<sup>138</sup> See para. 30, [A/CN.9/866](#).

<sup>139</sup> The Secretariat has modified the text and commentary of recs. 20 and 21 (recs. 20 and 21 in [A/CN.9/WG.1/WP.99/Add.1](#), numbered as recs. 19 and 20 in [A/CN.9/WG.1/WP.114](#)) to clarify that a member is not liable for the entire distribution if only a portion was received and is not liable for the entire distribution when only a portion was made in violation of rec. 20.

103. Because the UNLLO legal form will mainly be used by MSMEs, its members are likely to attach great importance to interpersonal relationships with other members, as is often the case in small businesses, and to resist transfers of membership of the UNLLO without the approval of other members. In addition, there might not be a ready market for the transfer of a share of an UNLLO.

104. The Legislative Guide provides for freedom of contract for most aspects of the UNLLO.<sup>140</sup> Accordingly, the default provision set out in the Guide permits members of the UNLLO to transfer their share, unless they have agreed otherwise in their organization rules. In addition, given that a member's share encompasses only financial rights, and bearing in mind the general nature of UNLLOs, the default provision in respect of the transfer of rights does not enable the transferee to take decisions on the UNLLO, unless the members have agreed otherwise in their organization rules.<sup>141</sup> This latter rule reflects the idea that, given the particular characteristics of the UNLLO, members not seeking to transfer their rights must consent to changes in the management and control of the UNLLO. These rules are reflected in recommendation 22.

105. In the situation of the death of a single member of the UNLLO, complications could arise in that the member's share might be transferable, but not the member's governance rights. The organization rules should contain appropriate provisions to provide any necessary clarity in that circumstance.<sup>142</sup>

**Recommendation 22: The law should provide that members may transfer their financial rights in the UNLLO, but not their decision-making rights, unless otherwise agreed in the organization rules.**<sup>143</sup>

*[Note to the Working Group: The Working Group may wish to consider whether the provisions included in recommendations 23 to 25 should be made mandatory, and the Working Group may then wish to include provisions for parties to deviate from them by organization rules, in order to ensure transparency of the UNLLO since these recommendations affect the existence and structure of the business itself.*

*Finally, the Working Group may as well wish to consider whether it would be advisable to have a separate discussion on dissolution and winding-up for a single-member UNLLO and more sophisticated forms of an UNLLO (para. 90, A/CN.9/963).]*

<sup>140</sup> For improved clarity of the text, the Secretariat has: (a) changed the order of paras. 102 and 103 (paras. 93 and 92 in A/CN.9/WG.1/WP.114); (b) moved the final sentence of para. 102 to the opening of para. 104 (para. 94 in in A/CN.9/WG.1/WP.114) with editorial adjustments; and (c) eliminated the phrase "including fiduciary rights and information rights" from para. 102.

<sup>141</sup> At its thirty-second session, the Working Group agreed that the definition of share should be limited to economic rights (para. 46, A/CN.9/968). The Secretariat has redrafted para. 104 (para. 94 in in A/CN.9/WG.1/WP.114) to clarify the distinction between financial and decision-making rights. The Working Group may wish to consider replacing "financial rights" in rec. 22 with "share." The Working Group may also wish to clarify whether the transfer of a member's share of an UNLLO would cause dissociation to occur, or whether the transferor retains decision-making rights.

<sup>142</sup> The Working Group may wish to consider whether governance rights would be extinguished by the members death, and whether rec. 7(a) would require dissolution of the UNLLO. See also, supra, footnotes 59 and 65.

<sup>143</sup> For greater clarity of the recommendation (rec. 22 in A/CN.9/WG.1/WP.99/Add.1, numbered as rec. 21 in A/CN.9/WG.1/WP.114), the Secretariat has: (a) replaced "non-financial rights" with "decision-making rights"; (b) deleted the phrase "in the UNLLO" after "decision-making rights"; and (c) replaced the phrase "Members ... by agreement" (as it appeared in rec. 22 in A/CN.9/WG.1/WP.99/Add.1) with "unless ... rules".

## I. Restructuring or conversion

106. As noted above (para. 40) in respect of recommendation 7, the Legislative Guide is intended to permit the UNLLO to evolve from a very small enterprise to a more complex multi-member entity,<sup>144</sup> and possibly to convert into another legal business form altogether. That approach is reflected in recommendation 23, which permits the members of the UNLLO to agree to restructure the UNLLO or to convert it into a different legal form. This Guide takes the view that members should also be permitted to agree on mergers, split-ups and any other types of restructuring.<sup>145</sup>

107. Further, as noted above in paragraph 71 in connection with recommendation 13, a decision on the restructuring or conversion of the UNLLO would be a decision retained by the members, and would require a [qualified majority] unless otherwise indicated in the organization rules.<sup>146</sup>

108. The State in which the UNLLO would restructure or convert to another legal form may wish to ensure that adequate safeguards are in place to protect third parties dealing with the UNLLO from any adverse effects on their rights that could arise from such a restructuring or conversion of the UNLLO. Such safeguards may already exist in legislation providing for conversion into other legal business forms,<sup>147</sup> and could consist, for example, of notice periods, publication requirements or rules on the transfer of third-party rights to the new legal form.<sup>148</sup>

**Recommendation 23: The law should provide that the members of an UNLLO may agree to restructure it or convert it into another legal form by [qualified majority].<sup>149</sup>**

## J. Dissolution and winding-up

109. Recommendation 24(a) provides that the members of the UNLLO may decide in their organization rules that the UNLLO will be dissolved and wound up on the occurrence of an event specified in the organization rules. Should the members of the UNLLO not have established terms under which the UNLLO would be dissolved and wound up, they may decide by [qualified majority] to dissolve and wind up the entity as indicated in recommendation 24(b). This level of required consent is commensurate with that required in respect of a decision by members on restructuring the UNLLO or converting it into another legal form, as well as reflecting the default approach for decisions made by members on matters outside of the day-to-day operation of the business.<sup>150</sup>

110. Recommendation 24(c) includes a mandatory provision that members may not vary by agreement. An administrative or judicial decision (for example, a decision by

<sup>144</sup> See paras. 24 and 32 of [A/CN.9/800](#), paras. 67 and 74 of [A/CN.9/825](#), and para. 19 of [A/CN.9/831](#).

<sup>145</sup> At its thirty-second session, the Working Group agreed that the default approach to resolve differences arising outside of the day-to-day operations of the UNLLO would be by qualified majority, but it was agreed to revisit the issue, along with the list, at a future session (para. 39, [A/CN.9/968](#)). If the Working Group retains qualified majority as the standard for all actions such as scaling up, mergers, split-ups, and others, the Secretariat has suggested using the term “restructuring” to avoid a need for separate recommendations.

<sup>146</sup> As agreed by the Working Group at its twenty-fifth session, the level of agreement among members for restructure and conversion of the UNLLO should be commensurate with that required for dissolution and winding-up of the UNLLO (para. 90, [A/CN.9/860](#)).

<sup>147</sup> As agreed by the Working Group at its twenty-fifth session (para. 91, [A/CN.9/860](#)).

<sup>148</sup> The Secretariat has replaced “business” with “legal” both in para. 108 (para. 105 of [A/CN.9/WG.1/WP.112](#)) and in rec. 23 (rec. 22 [A/CN.9/WG.1/WP.112](#)) for improved clarity of the text.

<sup>149</sup> The Secretariat has added the phrase “agree to” and changed “agreement” to “majority.”

<sup>150</sup> As agreed by the Working Group at its twenty-fifth session (para. 87, [A/CN.9/860](#)).



an insolvency court)<sup>151</sup> made pursuant to the law of the State ordering the liquidation of the UNLLO must be respected by its members.

111. Again, the State in which the UNLLO would be dissolved or wound up may wish to ensure that adequate safeguards are in place to protect third parties from any adverse effects that could arise from the UNLLO's dissolution or winding-up. Such safeguards may already exist in other legislation providing for dissolution or winding-up of legal business forms.<sup>152</sup>

**Recommendation 24: The law should provide that the UNLLO shall be dissolved and wound up in the following circumstances:**

**(a) On the occurrence of any event that is specified in the organization rules as causing the dissolution of the UNLLO;**

**(b) On a decision by [qualified majority] of the members; or**

**(c) Upon the rendering of a judicial or administrative decision that the UNLLO is dissolved.**

## K. Dissociation or withdrawal

112. The default approach throughout this Legislative Guide is that members of an UNLLO will have equal financial and decision-making rights unless otherwise agreed by the members themselves. This is further reflected in the fact that the default provision for decisions retained by the members as a result of their status as members is determined on a per capita basis. Further, in an UNLLO managed by all of its members exclusively, the default provision for resolving differences among members on matters concerning day-to-day operations of the UNLLO is that they may be decided by a majority of members, thus providing a convenient way to resolve more routine differences of view among the members in their capacity as managers.<sup>153</sup> These two default provisions provide a reasonable and coherent decision-making system to resolve basic disputes in the UNLLO and to continue to conduct the affairs of the UNLLO, while at the same time allowing<sup>154</sup> for members to dissent.

113. However, members of the UNLLO may not find these default decision-making mechanisms adequate once dissatisfaction or distrust disrupts their relationship. Members may not have foreseen the possibility of intractable disputes and they may be unable to settle them internally. As such, the UNLLO legislation includes a default provision for dealing with such disputes.

114. One option for such a default provision could be to permit one or more dissatisfied members to compel the dissolution of the UNLLO and the liquidation of its assets. This approach, however, could create uncertainty and instability for the members and the UNLLO. Most importantly, perhaps, it would not permit continuation of the UNLLO and would thus result in a net loss in economic value.

115. A second option for dealing with intractable member disputes would be to facilitate the continued existence of the UNLLO, but permit a member to dissociate

<sup>151</sup> As agreed by the Working Group at its twenty-fifth session (para. 85, [A/CN.9/860](#)).

<sup>152</sup> As agreed by the Working Group at its twenty-fifth session (para. 86, [A/CN.9/860](#)). See also para. 108 above.

<sup>153</sup> Consistent with the new section D on Membership in the UNLLO, the Secretariat has redrafted the first three sentences ("The default ... as managers.") of the paragraph (para. 102, [A/CN.9/WG.I/WP.114](#)) to clarify the distinction between members and managers and has removed the discussion of matters that fall outside the ordinary course of business.

<sup>154</sup> Given the Working Group's decision to replace unanimity with qualified majority at its twenty-seventh session (para. 63, [A/CN.9/895](#)), there would no longer be an effective veto. The Secretariat has therefore amended this paragraph accordingly. The Secretariat has deleted the final sentence of this paragraph ("Depending on ... with a veto", para. 102, in [A/CN.9/WG.I/WP.114](#)), pursuant to the Working Group's agreement at its thirty-second session that decision-making rights should not be apportioned by share (para. 46, [A/CN.9/968](#)).

from the UNLLO, either by voluntary withdrawal or by expulsion by other members of the UNLLO, or upon the occurrence of a qualifying event as established by the members in the organization rules or by the domestic law of the State (such as when it would be unlawful to carry on business activities with the person as a member).<sup>155</sup> Dissociated members would receive the fair value of their share of the UNLLO. However, permitting such an arrangement could be subject to abuse and result in minority oppression. In the scenario in which a conflict among members could result in a majority of members expelling a minority, the minority could<sup>156</sup> be left to sell its share back to the majority members for whatever price the majority was willing to offer.

116. Recommendation 25 suggests that the preferred option in creating a default provision to resolve intractable disputes is to permit members to withdraw from the UNLLO and to be paid the fair value of their interest over a reasonable time. This would allow the UNLLO to continue existing unless the members decide otherwise, thus preserving both the UNLLO's economic stability and value. Moreover, permitting the payment of the fair value of a withdrawing member's share of the UNLLO over time would avoid a situation where the withdrawing member held the UNLLO and its remaining members to ransom by demanding immediate payment of the entire amount. Complying with a demand of that sort might not be possible for the UNLLO or its remaining members, and might effectively force its dissolution if it is rendered insolvent.

117. The default provision suggested in recommendation 25 may still present challenges in terms of assessing the fair value of the withdrawing member's share of the UNLLO. The starting point for that valuation should be that the withdrawing members would receive the same amount in a buyout as that member would receive if the UNLLO were dissolved. However, fair value dictates that the value of the UNLLO's goodwill should also be included in the calculation, and the buyout price for the members withdrawing should thus be that member's share of the liquidation value of the UNLLO, or a value based on the sale of the entire UNLLO as a going concern, whichever is greater.

118. It would also be prudent for members to decide in their organization rules to use alternative dispute resolution mechanisms (see rec. 28) for matters that cannot be resolved through the application of the organization rules or the default provisions. Determining the fair valuation of a withdrawing member's share could be one of the issues that might be resolved through alternative dispute resolution, such as mediation, expedited arbitration or a request for redress by a referee or other neutral third party.<sup>157</sup>

**Recommendation 25: The law should provide that, unless otherwise agreed, members may withdraw from the UNLLO and be paid over a reasonable period of time the fair value of their share of the UNLLO.**<sup>158</sup>

<sup>155</sup> At its thirty-second session, the Working Group agreed that some guidance on the issue of expulsion should be provided (para. 40, A/CN.9/968). The Secretariat has included the occurrence of a qualifying event, and included one such example, as an additional instance in which dissociation may occur.

<sup>156</sup> The Secretariat suggests replacing "would" with "could" (see para. 105 of A/CN.9/WG.1/WP.114).

<sup>157</sup> See Section M on "Dispute resolution", *infra*.

<sup>158</sup> The Working Group may wish to consider whether it should be clarified that rec. 25 does not require an UNLLO to pay upon any request of a member to withdraw, but should require reasonable cause or an agreement among members. The Secretariat suggests modifying the recommendation to something along the lines of: "The law should provide that, upon agreement or reasonable cause, members may withdraw from the UNLLO and be paid over a reasonable period of time the fair value of their share of the UNLLO unless otherwise agreed."

## L. Record-keeping, inspection and disclosure

119. Open communication and transparency are important issues for any business entity, but they are arguably of even greater importance in respect of the UNLLO. Members of the UNLLO are likely to have an equal share of the UNLLO, and establishing and maintaining trust among them is of great importance. Access to and proper dissemination of information to all members will further enhance trust among members and will permit them to be meaningfully involved in decision-making processes, thus providing a strong basis for the positive performance of the UNLLO.

120. The importance of sharing and disseminating information on the UNLLO among its members is emphasized by the mandatory provisions set out in recommendations 26 and 27. Recommendation 26 requires the UNLLO to keep certain information and recommendation 27 ensures that each member has the right to inspect this information, as well as the right to access any other information regarding the UNLLO that would be reasonable for the UNLLO to keep, which may include information on its activities, operations and financial situation.<sup>159</sup> Members can agree that the UNLLO should retain information additional to that required in recommendation 26.<sup>160</sup>

121. While some States apply broad disclosure requirements to businesses that are not publicly traded (but allow exceptions to be made for MSMEs), others limit mandatory disclosure to public business entities.<sup>161</sup> In keeping with the intended simplicity of the UNLLO, the Legislative Guide recommends that the information to be retained by the UNLLO further to recommendation 26 need not be publicly disclosed,<sup>162</sup> although it should be shared with all members and subject to their inspection.

122. The list of records that must be kept pursuant to recommendation 26 should not be particularly burdensome for UNLLOs, even when they are micro and small businesses, in that it consists of basic information necessary for entrepreneurs of all levels of sophistication to run their business. Moreover, the records that must be kept need only be “reasonable records”, i.e. recorded in a timely fashion and in a medium that could be expected of a similar business operating in a comparable context. The recommendation does not specify when or how that information must be kept, and it would be open to the UNLLO to simply rely on electronic or other records that are reasonable for a business of its size and complexity.

123. For example, many MSMEs use various mobile applications that are available on electronic devices to run their commercial enterprises, and they are thus easily able to track and access all types of information relevant to the business, including inventory, simple balance sheets, and even tax returns. An UNLLO operating in that context could then satisfy the requirements of recommendations 26 and 27 by retaining and permitting access to the information electronically available via that mobile application.

<sup>159</sup> As agreed by the Working Group at its twenty-fifth session (para. 93(b), [A/CN.9/860](#)).

<sup>160</sup> The Secretariat has revised para. 120 (para. 117 of [A/CN.9/WG.I/WP.112](#)) for further clarity of the text.

<sup>161</sup> The Secretariat has deleted the phrase “Subject to ... made public”, after “public business entities” for improved consistency of the paragraph (see para. 118 of [A/CN.9/WG.I/WP.112](#)).

<sup>162</sup> While businesses that are not publicly traded, like UNLLOs, are not required to provide the same flow and rate of information as businesses that are not publicly traded generally, they may have strong incentives for doing so, particularly as they develop and progress. Indeed, businesses wishing to improve their access to credit or to attract investment may wish to signal their accountability by supplying information about: (1) the business’ objectives; (2) principal changes; (3) balance sheet and off-balance sheet items; (4) the financial position and capital needs; (5) the composition of any management board and the policy for appointments and remuneration; (6) forward-looking expectations; and (7) profits and dividends. Such considerations are not likely to trouble the smaller enterprises contemplated as the main users of the UNLLO, but could be important for those businesses as they grow. See also the agreement of the Working Group at its twenty-fifth session (para. 93(d), [A/CN.9/860](#)).

**Recommendation 26: The law should provide that the UNLLO must keep reasonable records including:**

- (a) Information provided to the business registry;<sup>163</sup>
- (b) Any record of the organization rules;
- (c) A current list of managers and members, as well as their contact details;
- (d) Financial statements (if any);
- (e) Tax returns or reports; and
- (f) The activities and operations of the UNLLO.<sup>164</sup>

**Recommendation 27: The law should provide that each member has the right to:**<sup>165</sup>

- (a) Inspect and copy any of the records required to be kept by the UNLLO under recommendation 26; and
- (b) Obtain from the UNLLO information concerning its activities, operations and finances, as well as any other information that would be reasonable for the UNLLO to keep.<sup>166</sup>

## M. Dispute resolution<sup>167</sup>

124. Members can usually negotiate among themselves to arrive at an efficient resolution of disputes concerning the operation of the UNLLO. As noted in paragraphs 113 and 118 above, however, they may not be able to settle a dispute once dissatisfaction or distrust disrupts their relationship and resolution may thus require that they engage in potentially long and expensive litigation. Further, paragraphs 81 to 86 above describe fiduciary duties and the role they play in providing important safety mechanisms to protect members against opportunistic actions of a manager or another member. From the perspective of some legal traditions, however, open-ended fiduciary duties may not be easily enforceable unless they are clearly enunciated as formal legal rules. In both instances, alternative dispute resolution (“ADR”) mechanisms, such as arbitration, mediation and other extrajudicial methods can assist members of an UNLLO in reaching an outcome consistent with the simple nature of the UNLLO, where interpersonal relationships play an important role in the management of the business.

125. ADR mechanisms would also benefit the UNLLO in commercial disputes with third parties dealing with the UNLLO, such as creditors, suppliers or clients, where court processes could also be too lengthy and expensive. UNLLOs involved in legal disputes with those third parties would need to weigh the cost of court processes against the costs of unresolved disputes, which may include unpaid accounts, when deciding how to pursue their disputes. Members of the UNLLO may also face

<sup>163</sup> The Secretariat has replaced “formation data” with “information provided to the business registry” (see footnote 18, *supra*).

<sup>164</sup> The Secretariat has deleted the phrase “financial information” from rec. 26(f) (rec. 25(f) in [A/CN.9/WG.1/WP.114](#)) to avoid redundancy with rec. 26(d) (rec. 25(d) in [A/CN.9/WG.1/WP.114](#)).

<sup>165</sup> As agreed by the Working Group at its twenty-fifth session in respect of the financial information of all sizes of simplified business entities (para. 93(b), [A/CN.9/860](#)).

<sup>166</sup> For improved clarity of the text, the Secretariat has: (a) replaced “financial information” with “finances”; (b) split rec. 27 (rec. 26 in [A/CN.9/WG.1/WP.114](#)) in two parts; and (c) replaced “reasonable information” with “information that ... keep”.

<sup>167</sup> The Secretariat has revised paras. 124 to 126 (paras. 121 to 123 of [A/CN.9/WG.1/WP.112](#)) for improved clarity of the text. It has also changed “conflict” to “dispute” for consistency with other UNCITRAL texts.

geographic, linguistic and cultural barriers within a court system (for example, women may face formal or practical restrictions in accessing the courts or the UNLLO members might not be fluent in the official language of the courts). ADR mechanisms will help reduce these obstacles. Not only are they typically faster, but these mechanisms may also be cheaper and permit a more informal and participatory approach to dispute resolution, as well as facilitate parties in working toward a more collaborative outcome than what may be possible through the judicial settlement of the dispute.

126. While recourse to an ADR mechanism would provide a valuable tool for UNLLOs in legal disputes, there may be restrictions within the State's domestic legal framework on the types of cases which may be subject to ADR, including restrictions on the availability of ADR for criminal matters, labour and competition matters, or insolvency. Such matters would be beyond the scope of the Legislative Guide and are therefore excluded from the recommendation.

**Recommendation 28: The law should provide that any dispute that arises among members of the UNLLO or any third party may be submitted to alternative dispute resolution mechanisms, unless there are restrictions upon such actions within the State's domestic legal framework.**<sup>168</sup>

<sup>168</sup> At its twenty-eighth session, the Working Group agreed to include a new recommendation in the Legislative Guide encouraging the use of alternative dispute settlement in respect of the UNLLO (para. 149, [A/CN.9/900](#)). See also *supra* footnote 157 and para. 118.

## Appendix

### Recommendations on an UNLLO

#### A. General provisions

**Recommendation 1:** The law should provide that an UNCITRAL Limited Liability Organization (“UNLLO”) is governed by [this law] and by the organization rules.

**Recommendation 2:** The law should provide that an UNLLO may be organized for any lawful business or commercial activity.

**Recommendation 3:** The law should provide that the UNLLO has a legal personality distinct from its members.

**Recommendation 4:** The law should provide that a member is not personally liable for the obligations of the UNLLO solely by reason of being a member of that UNLLO.

**Recommendation 5:** The law should not require a minimum capital for the formation of an UNLLO.

**Recommendation 6:** The law should provide that the name of the UNLLO must include a phrase or abbreviation that identifies it as an UNLLO.

#### B. Formation of the UNLLO

**Recommendation 7:** The law should:

(a) Provide that an UNLLO must have at least one member from the time of its formation [until its dissolution]; and

(b) Specify whether only natural persons or also legal persons are permitted to be members of an UNLLO.

**Recommendation 8:** The law should provide that the UNLLO is formed once it is registered.

**Recommendation 9:** The law should keep the information required for the formation of the UNLLO to a minimum. Such information should include:

(a) The name of the UNLLO;

(b) The business address or, when the business does not have a standard form address, precise geographical location of the UNLLO; and

(c) The identity of each person who manages the UNLLO.

#### C. Organization of the UNLLO

**Recommendation 10:** The law should:

(a) Indicate, where a member or members of the UNLLO adopt organization rules, what form these rules may take; and

(b) Provide that the organization rules may address any matters relating to the UNLLO in so far as they do not contradict the mandatory provisions set out in recommendations 1, 2, 3, 4, 6, 7, 8, 9, [16], 17, 20, 21, 24(c), 26 and 27 [to be further determined] in this Guide.

## **D. Membership in an UNLLO**

**Recommendation 11: The law should:**

(a) Specify the decisions to be taken by the members. At a minimum, such decisions should include:

(i) Decisions to modify the organization rules, which are to be taken by unanimity; and

(ii) Decisions on restructuring and conversion, dissolution and winding-up, which are to be taken by a qualified majority;

(b) Provide that the organization rules specify any other decision to be taken by the members, which are to be taken by majority unless otherwise agreed in the organization rules; and

(c) Establish that members of the UNLLO have equal rights to decide on the matters listed in subparagraphs (a) and (b) unless otherwise agreed in the organization rules.

## **E. Management of the UNLLO**

**Recommendation 12: The law should provide that the UNLLO is managed by all of its members exclusively, unless it is indicated in the organization rules that the UNLLO shall appoint one or more designated managers.**

**Recommendation 13: The law should provide that when the UNLLO is managed by all of its members exclusively and unless otherwise stipulated in the organization rules:**

(a) Differences among members on matters concerning day-to-day operations of the UNLLO should be resolved by a majority decision of the members; and

(b) The members of the UNLLO have joint and equal rights to decide on matters concerning the regular operations of the UNLLO.

**Recommendation 14: The law should provide that, unless otherwise agreed in the organization rules, one or more designated manager(s) may be appointed and removed by a majority decision of the members.**

**Recommendation 15: The law should provide that when the UNLLO is managed by one or more designated manager(s):**

(a) Managers are responsible for all matters that are not retained by the members of the UNLLO pursuant to [this law] or the organization rules; and

(b) Disputes among managers should be resolved by a [majority] decision of the managers, unless otherwise stipulated in the organization rules.

**Recommendation 16: The law should provide that each manager individually has the authority to bind the UNLLO unless otherwise agreed. Restrictions upon that authority will not be effective against third parties dealing with the UNLLO without proper notice.**

**Recommendation 17: The law should provide that any manager of the UNLLO owes a duty of care and a duty of loyalty to the UNLLO.**

## **F. Members' share of and contributions to the UNLLO**

**Recommendation 18:** The law should provide that:

(a) Members of the UNLLO are permitted to agree upon contributions, if any, they make to the UNLLO, including their type, timing and value. When members have not agreed upon a value of their contributions, any contributions shall be deemed equal; and

(b) The members' share of the UNLLO shall be in accordance with the value of their contributions, unless otherwise agreed in the organization rules.

## **G. Distributions**

**Recommendation 19:** The law should provide that distributions are made to members in proportion to their respective share of the UNLLO as stated in the organization rules. When the member's share of the UNLLO is not so stated, distributions by the UNLLO shall be made equally among its members.

**Recommendation 20:** The law should prohibit distributions from being made to any member if upon giving effect to such distribution:

(a) The UNLLO would not be able to pay its debts as they become due in the ordinary course of business; or

(b) The UNLLO's total assets would be less than the sum of its total liabilities.

**Recommendation 21:** The law should provide that each member who received a distribution, or any portion thereof, made in violation of recommendation 20 is liable to reimburse the UNLLO for this distribution or portion thereof.

## **H. Transfer of rights**

**Recommendation 22:** The law should provide that members may transfer their financial rights in the UNLLO, but not their decision rights, unless otherwise agreed in the organization rules.

## **I. Restructuring or conversion**

**Recommendation 23:** The law should provide that the members of an UNLLO may agree to restructure it or convert it into another legal form by [qualified majority].

## **J. Dissolution and winding-up**

**Recommendation 24:** The law should provide that the UNLLO shall be dissolved and wound up in the following circumstances:

(a) On the occurrence of any event that is specified in the organization rules as causing the dissolution of the UNLLO;

(b) On a decision by [qualified majority] of the members; or

(c) Upon the rendering of a judicial or administrative decision that the UNLLO is dissolved.



## **K. Dissociation or withdrawal**

**Recommendation 25:** The law should provide that, unless otherwise agreed, members may withdraw from the UNLLO and be paid over a reasonable period of time the fair value of their share of the UNLLO.

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

**Recommendation 26:** The law should provide that the UNLLO must keep reasonable records including:

- (a) Information provided to the business registry;
- (b) Any record of the organization rules;
- (c) A current list of managers and members, as well as their contact details;
- (d) Financial statements (if any);
- (e) Tax returns or reports; and
- (f) The activities and operations of the UNLLO.

**Recommendation 27:** The law should provide that each member has the right to:

- (a) Inspect and copy any of the records required to be kept by the UNLLO under recommendation 26; and
- (b) Obtain from the UNLLO information concerning its activities, operations and finances, as well as any other information that would be reasonable for the UNLLO to keep.

## **M. Dispute resolution**

**Recommendation 28:** The law should provide that any dispute that arises among members of the UNLLO or any third party may be submitted to alternative dispute resolution mechanisms, unless there are restrictions upon such actions within the State's domestic legal framework.

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