



UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW

LEGISLATIVE GUIDE
ON KEY PRINCIPLES OF
A BUSINESS REGISTRY



Why a legislative guide on business registration?

A sound business environment facilitates the establishment and operation of businesses of all sizes. Fair and transparent legislation that takes into account the needs of micro, small and medium-sized enterprises (MSMEs) is one of the legal conditions that contributes to that environment.

International studies show that MSMEs represent the majority of firms in most countries and account for a large part of total employment. In some countries, MSMEs play a key role in economic growth often by channelling innovation and providing job opportunities to large segments of society, including the most vulnerable. In other countries, the potential of these businesses still needs to be unlocked. The General Assembly has stressed the importance of focusing on MSMEs to achieve the Sustainable Development Goals, in particular to promote innovation, creativity and decent work for all.

The variety of MSMEs reflects the diverse economic, social, political and cultural conditions of the countries in which they operate. Despite that variety, MSMEs usually experience similar obstacles during their life cycle. The high cost and complex procedures of registering a business as well as other costs (for example, taxes and social contributions) to operate in the formal economy are one of the most common obstacles. As a result, a large percentage of MSMEs operate in the informal sector. In order to create a sound business environment, however, it is in the interest of both States and MSMEs that MSMEs operate in the formal economy. In its resolution 71/279 (in 2017), the General Assembly recognized the importance of encouraging MSME formalization.

In 2013, the United Nations Commission on International Trade Law (UNCITRAL) agreed to take up work on reducing the legal obstacles faced by MSMEs throughout their life cycle, starting with a focus on simplification of incorporation. The *Legislative Guide on Key Principles of a Business Registry* is a result of that mandate with specific focus on the obstacles that MSME encounter at their establishment.

Purpose of the *Legislative Guide*

The *Legislative Guide* aims at simplifying and streamlining business registration in order to promote the formalization of MSMEs. The guide also advocates the organization and function of business registries in a manner intended to ease access to registered information, thus facilitating the search for potential business partners, clients or sources of finance and reducing risk when entering into business transactions.

The guide is addressed to policymakers, registrars and those involved in reforming business registration, or who are otherwise interested in the establishment and operation of a business registry. It draws on international best practices originating from business registration reforms implemented by States in different regions.

Content of the *Legislative Guide*

The *Legislative Guide* consists of an introduction and eleven chapters dealing with the main aspects of establishing and operating a business registry, registration and post-registration procedures and the requirements businesses should comply with in order to be registered. The guide contains 58 recommendations providing possible legislative solutions to various registration issues: each recommendation is introduced with a commentary that discusses the advantages and disadvantages of different legislative and policy choices.

The **Introduction** establishes the context and purpose of the guide: it emphasizes that streamlined business registration promotes business formalization in general and outlines features of business registries that facilitate MSME registration. The introduction also contains a glossary of terms that appear frequently in the guide and clarifies that the text uses neutral legal terminology so that the recommendations can be adapted to different legal traditions. The introduction concludes with an overview of the main steps of business registration reform.

Chapter I focuses on the objectives and purposes of a business registry. An effective registry facilitates the operation of a business in the formal economy; provides the business with an identity recognized by the State; and receives, stores and makes the information on a registered business accessible to the public. Laws governing the operation of the registry should be simple and clear: for example, they should avoid or limit unnecessary use of discretionary power by the registrar. The chapter also lists the key features of a business registry, noting that a good quality registry system and registered information require regular updating and verification.





Chapter II discusses the establishment and functions of the business registry. Different options on how to organize and run the registry are available to States: for example, a State can entrust a government department with the task of operating the registry or can outsource some or all of the registry operations. Regardless of how the registry is organized, a State should always retain responsibility for ensuring that the registry is operated in accordance with the law. The chapter also deals with procedures to appoint and dismiss the registrar, the registrar's accountability in operating the registry, and the importance of laws and service standards to ensure transparency in the operation of the registry. Finally, the chapter describes the core functions of the registry and how an interconnected system of registration offices within a State ensures non-duplicative collection of information and consistent identification and classification of registered businesses.

Chapter III presents a set of key tools that facilitate and improve the quality of registration services and allow interconnectivity between the business registries and other authorities, such as taxation and social security authorities, involved in the process of establishing a business. The tools include electronic registration, one-stop shops and unique identifiers. The guide recommends that efficient and effective business registration should make use of all of them and the chapter provides a detailed description of how a State could introduce and implement those tools. The chapter also highlights the main policy and legal issues that States should consider when adopting the tools. It is worth noting that the guide is written so as to be applicable to paper-based as well as electronic or mixed registries.



Chapter IV addresses the main aspects of how to register a business. First, it introduces the controls performed by the registry to verify that registration requirements are met. The chapter acknowledges that the extent and nature of verification varies from State to State and it does not recommend any particular approach. The chapter then emphasizes that easy access to information on how to register is key to facilitating registration. It also encourages States to permit voluntary registration of businesses when it is not mandatory. The second part of the chapter examines the key steps of the registration procedure, which include: the minimum information a business should provide in order to register and the language of that information; the notification of registration by the registry and its content; the period of effectiveness of registration; the moment at which registration is effective and the reasons and procedures to reject an application. The chapter concludes with a short discussion on the registration of business branches established in a foreign State.

Chapter V deals with measures the registry should adopt to ensure that the registered information on the business is as up-to-date as possible so that the information continues to be of value to the users of the registry. The chapter lists the minimum information businesses should submit after registration and when, how the registry should process the amendments to registered information and the time at which those amendments should become effective.

Chapter VI focuses on how to ensure access to registration services and registered information. The chapter presents practical measures to facilitate the use of registry services, such as hours of operation of the registry offices or direct electronic access to the registry, and discusses the requirements to access those services. The chapter emphasizes that potential registrants should be granted equal rights to register and States should ensure that registration requirements are not gender-biased. States should also ensure equal access for all interested users to the registered information, save for protected data under other applicable law, and registries should make that information easily accessible to the public, including users outside national borders.

Chapter VII deals with the fees required for business services. It recommends that in order to facilitate business registration, in particular of MSMEs, States should charge no or very low fees. When fees are charged, they should be established according to the cost-recovery principle. As a revenue generating mechanism, the chapter recommends that registries only charge fees for the provision of advanced information services, i.e. those services which require processing time by the registry (e.g., provision of bulk information). The chapter concludes by highlighting the importance of publicizing the amount of the registry's fees and methods of payment, and recommends that States enable and facilitate e-payments.

Chapter VIII addresses the liability of the registrants in discharging their obligations and that of the State for malfunctions of the business registry. Registrants are liable for any misleading, false or deceptive information submitted to the registry. The chapter outlines sanctions that a State can employ to ensure registrants' compliance with their obligations, as well as the pros and cons of imposing sanctions. In order to minimize the use of sanctions, the chapter encourages the adoption of preventive measures (e.g., training) to raise business awareness on the importance of complying with registration requirements. States, too, may be liable for loss or damage caused in the operation of the registry. The chapter presents some examples of registry errors or negligence and measures that can be adopted to minimize the potential for them to occur.

Chapter IX deals with the deregistration of a business, which occurs when the business has permanently ceased to operate. The guide only focuses on deregistration of solvent dormant businesses, since deregistration pursuant to winding-up or insolvency is not regulated by the laws on business registration. The chapter discusses both deregistration carried out upon request of the business and that initiated by the registrar, describing their process, time and effectiveness. The chapter concludes with a discussion of the circumstances under which and the time limit within which registration of a deregistered business can be reinstated.

Chapter X examines the length of, and methods for, the preservation of registry records taking into account that a registry can be electronic, paper-based or a mixed registry. The focus is on measures to prevent loss of or damage to registry records as well as on risk-mitigation procedures that the registry should adopt. The chapter also addresses the alteration or deletion of information by the registrar, which affects the integrity of the records as well.

Chapter XI briefly considers the reform of the legal framework underlying business registration. Streamlining business registries may entail amending laws that indirectly affect the registration process so that they better respond to the needs of businesses, and in particular of MSMEs. The chapter considers three general aspects: the need to clarify the law so as to avoid any impediments to simplifying registration; the importance of developing flexible and simplified legal forms for business that can facilitate registration; and the benefits of legislation capable of accommodating the evolution of technology.



The *Travaux préparatoires*

After receiving its mandate in July 2013, Working Group I began its work in February 2014 focusing on two themes: simplification of incorporation and best practices in business registration both of which were said to contribute to reducing the legal obstacles faced by MSMEs.

Between 2015 and 2018, the Working Group discussed various iterations of the draft legislative guide on business registration. In addition to representatives of UNCITRAL member States, representatives of observer States and a number of international organizations, both intergovernmental and non-governmental, actively participated in the preparatory work. The different versions of the guide, the reports of the Working Group's discussions and their audio recordings are available, in the six United Nations languages, on the UNCITRAL website (uncitral.un.org/) in the section "Working Documents – Working Groups".

At its thirtieth session, in March 2018, the Working Group finalized the draft guide and agreed to submit it to UNCITRAL for adoption. The final negotiations on the draft were held during the fifty-first session of UNCITRAL, in New York, from 26 to 27 June 2018 and the text was adopted by consensus on 27 June 2018. Subsequently, the General Assembly adopted resolution 73/197 of 20 December 2018 in which it expressed its appreciation to UNCITRAL for completing and adopting the *Legislative Guide on Key Principles of a Business Registry*.



The United Nations Commission on International Trade Law (UNCITRAL)

UNCITRAL, established in 1966, is the core legal body of the United Nations in the field of international trade law. Its membership is structured to ensure representation of the world's various geographic regions and its principal economic and legal systems. UNCITRAL carries out its work at annual sessions, its texts are developed by working groups comprising all member States of UNCITRAL which meet once or twice a year.

In addition to member States, all States that are not members of UNCITRAL, as well as interested international organizations, are invited to attend its sessions and those of its working groups as observers.



Further information may be obtained from:

UNCITRAL Secretariat, Vienna International Centre
P.O. Box 500, 1400 Vienna, Austria

Telephone: (+43-1) 26060-4060 Telefax: (+43-1) 26060-5813
Internet: uncitral.un.org Email: uncitral@un.org