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International Trade Law**
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**Report of Working Group I (MSMEs) on the work of its
thirty-fourth session (Vienna, 28 September–2 October 2020)**

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I. Introduction

(a) Preparation of legal standards in respect of micro, small and medium-sized enterprises

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

2. At its twenty-second session (New York, 10 to 14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission. The Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation⁴ as well as on what form that text might take,⁵ and business registration was said to be of particular relevance in the future deliberations of the Working Group.⁶

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

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

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

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

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

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

⁵ *Ibid.*, paras. 32 to 38.

⁶ *Ibid.*, paras. 47 to 50.

⁷ Since the Commission adopted the UNCITRAL Legislative Guide on Key Principles of a Business Registry at its fifty-first session, in 2018, paras. 4 to 11 only outline the history of the Working Group’s discussion on simplification of incorporation.

would discuss the alternative legislative models for MSMEs introduced in [A/CN.9/WG.I/WP.87](#) at a later stage.

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

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

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

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

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

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

11. At its thirty-second session (New York, 25 to 29 March 2019),¹¹ the Working Group continued its discussion on the draft legislative guide on an UNLLO considering the issues included in working paper [A/CN.9/WG.I/WP.114](#). The Working Group first discussed several definitions included in the Terminology section, then proceeded to consider other aspects of the draft guide and to provide additional clarity

⁸ [A/CN.9/860](#), paras. 76 to 96.

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

¹⁰ *Ibid.*, paras. 48 to 50.

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

on certain recommendations discussed at its previous session. The following recommendations and relevant commentary were discussed: recommendation 9 (section B on formation), recommendation 10 (section C on organization), recommendations 11 to 16 (section D on management of the UNLLO) and recommendation 17 (section E on members' share of and contributions to the UNLLO).

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

13. The thirty-fourth session of the Working Group, originally scheduled to take place in New York from 23 to 27 March 2020, was postponed due to the spread of the coronavirus disease 2019 (COVID-19).

II. Organization of the session

14. Working Group I, which was composed of all States members of the Commission, held its thirty-fourth session in Vienna from 28 September to 2 October 2020 in line with the decision on the format, officers and methods of work of the UNCITRAL working groups during the COVID-19 pandemic, adopted on 19 August 2020 by the States members of UNCITRAL (contained in document [A/CN.9/1038](#)). Arrangements were made to allow delegations to participate in person and remotely.

15. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Czechia, Dominican Republic, Finland, France, Germany, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Libya, Malaysia, Mexico, Nigeria, Peru, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Sri Lanka, Thailand, Ukraine, United States of America, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.

16. The session was attended by observers from the following States: Angola, Bolivia (Plurinational State of), Burkina Faso, Egypt, El Salvador, Ethiopia, Morocco, Myanmar, the Netherlands, Paraguay, Saint Lucia, Sierra Leone, Turkmenistan, Uruguay and Zambia.

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

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

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

(a) *Organizations of the United Nations system*: United Nations Industrial Development Organization (UNIDO) and World Bank Group (WB);

(b) *Intergovernmental organizations*: Caribbean Community Secretariat, and Mexican Section of the TMEC Secretariat;

(c) *Invited international non-governmental organizations*: American Bar Association (ABA), Conseils des Notariats de l'Union Européenne (CNUE),

European Law Students' Association, International Union of Notaries (UINL), Kozolchyk National Law Center (NatLaw), Law Association for Asia and the Pacific (LAWASIA) and Moot Alumni Association.

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

Chair: Ms. Maria Chiara Malaguti (Italy)

Rapporteur: Ms. Beulah Li (Singapore)

21. In addition to documents presented at its previous sessions, the Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.I/WP.117/Rev.1](#)*);

(b) Note by the Secretariat on a draft legislative guide on an UNCITRAL Limited Liability Organization ([A/CN.9/WG.I/WP.118](#));

(c) A compilation of comments on the draft legislative guide on an UNCITRAL Limited Liability Organization as contained in working paper [A/CN.9/WG.I/WP.118](#) ([A/CN.9/1009](#) and [Add.1](#));

(d) Observations by the Government of Italy on possible modifications of the draft legislative guide on an UNCITRAL Limited Liability Organization ([A/CN.9/WG.I/WP.120](#)); and

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

22. The Working Group adopted the following agenda:

1. Opening of the session.
2. Adoption of the agenda.
3. Preparation of legal standards in respect of micro, small and medium-sized enterprises.

III. Deliberations and decisions

23. The Working Group engaged in discussions in respect of the preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, in particular, on a draft legislative guide on an UNCITRAL Limited Liability Organization ([A/CN.9/WG.I/WP.118](#)). The deliberations of the Working Group on these topics are reflected below.

24. The Working Group considered whether to adopt its report during the session. It was reminded of the decision (the "Decision") adopted by the States members of UNCITRAL on 19 August 2020 (see annex I of document [A/CN.9/1038](#)) according to which the chairperson and the rapporteur would prepare a draft summary reflecting the deliberations and any conclusions reached during the session. The summary, revised according to the comments received from the delegations, would be presented as such to the fifty-fourth session of the Commission, in 2021, unless the Working Group decided to adopt it as its report. While different views and preferences were expressed, after noting its exceptional and temporary nature and placing emphasis on the transparency of decision-making, the Working Group decided to follow the Decision and accordingly requested the chairperson and the rapporteur to circulate the draft summary for comments in due course. Having reviewed the draft summary circulated by the chairperson and the rapporteur, the Working Group agreed to adopt it for transmission to the Commission as its own report. The Working Group also

agreed to possibly hold informal consultations, to discuss topics included in the provisional agenda for this session that were not discussed.¹²

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

A. Presentation of [A/CN.9/WG.I/WP.118](#)

25. The Working Group was reminded that it had concluded the first review of the draft legislative guide at its thirty-third session and that the Secretariat had organized two online informal consultations on the draft guide following the global outbreak of the COVID-19 pandemic and the postponement of the thirty-fourth session of the Working Group scheduled to be held in New York from 23 to 27 March 2020. The Working Group also heard a short introduction of the main changes to the draft guide (as contained in [A/CN.9/WG.I/WP.118](#)) arising from the deliberations of the Working Group at its thirty-third session. In addition to those changes, the Secretariat had also made additional adjustments in an effort to facilitate the cohesion and consistency of the text.

B. Member's share of the UNLLO and use of the term "share"

26. The Working Group considered the issue of a member's share of the UNLLO and the use of the term "share" in the draft legislative guide. A general preference was expressed to use the terms "membership" or "membership rights" as appropriate instead of the term "share".

27. There was general agreement that membership rights, as a default rule, should include both financial rights and decision-making rights. A suggestion was made that membership rights should be defined broadly to capture other rights discussed in the draft legislative guide, such as the right to inspect records of the UNLLO. In this respect, a general preference was expressed for retaining the reference to "rights" in the current version of draft recommendation 11 as it was broad enough to cover all types of rights addressed in the draft legislative guide.

Recommendations 21, 24 and 25

28. With respect to draft recommendation 21, a view was expressed that the term "share" should be replaced with "financial rights", instead of "membership rights", as it was only the distribution that was at concern. Another view was that since "membership rights" would be inclusive of "financial rights", such specification would not be necessary. It was further pointed out that the draft recommendation already allowed the members to agree on the distribution in the organization rules so that any balance could be divided in any way of their choice. Support was expressed for referring to "membership rights".

29. As to the proposal that the term "share" in draft recommendation 25 should be replaced with "financial rights", preference was to refer to membership rights since decision-making rights would also be of importance in determining the fair value of the member's share of the UNLLO. There was support for the view that the related commentary could include an explanation on "membership rights" in this context. A concern was expressed that determining the fair value of "membership rights" may raise an issue for MSMEs.

¹² For improved clarity of the report, the Secretariat has moved the paragraph previously under the section "Other business" upfront and has inserted the sentence "Having reviewed... as its own report" before the last sentence. The section "Other business" has been removed.

30. While the Working Group felt it necessary to continue its discussion on “membership” and “membership rights” and include definitions if necessary, it agreed to revert to this issue at a later stage.

31. The Working Group continued its discussion on “membership” and “membership rights” and heard different proposals of possible definitions of these two terms. A view was expressed that it would be important to have a definition of membership as the term was being used throughout the draft legislative guide. Another view was that a definition would not be of any critical importance since much information was already contained in the commentary. With respect to draft recommendation 24, it was suggested that having a definition of “membership rights” should prove worthwhile as it could clarify what a transfer would exactly entail. While various proposals on the definitions of “membership” and “membership rights” were put forward, the Working Group ultimately agreed to refer to the phrases “rights of the members” or “rights and duties of the members” (such as in draft recommendation 24), as appropriate, and not to define these terms.

C. Transfer of rights

Recommendation 24(a)

32. The Working Group considered draft recommendation 24(a) concerning the transfer of rights in the draft legislative guide. Noting that membership rights should be transferred as a whole, there was general support for the proposal that draft recommendation 24(a) should not provide for the possibility of partial transfer of the membership rights, and the term “or a part thereof” should be deleted for the sake of simplicity. Some delegations supporting this proposal noted that transfer of a part, for example one half, of the membership rights of a member to a non-member changes the allocation of decision-making rights by increasing the number of members and thus could be detrimental to the other members. A view was expressed, however, that in such a case, the other members can protect themselves by opposing such transfer according to recommendation 24(a).

33. A view was expressed that draft recommendation 24(a) should permit the transfer of financial rights without transferring decision-making rights so that the members could maximize the economic utility of their membership (e.g., use financial rights as collateral for security purposes). Another view was expressed that financial rights can only be shared but not transferred in some legal systems. While in some legal systems membership rights are severable so that financial rights may be distinguished from decision-making rights, it was explained that that is not necessarily the case in other legal systems. It was suggested that the related commentary for draft recommendation 24(a) should reflect, in a neutral manner, the rules on partial transfer of rights in different jurisdictions. It was also suggested that the commentary could indicate that States may wish to clarify in their national law whether transferring a part of the UNLLO membership is allowed.

34. A concern was expressed that, in case of voluntary transfer, draft recommendation 24(a) should permit transfers of only a portion of membership rights consisting of both financial and decision-making rights, so that a member could obtain cash the member needs without losing its status as a member and also without imposing financial burden on the UNLLO. Another concern was expressed that transfer of rights should not be subject to the consent of the other members of the UNLLO.

35. The Working Group agreed that the phrase “or a part thereof” be deleted in draft recommendation 24(a) and that the possibility of partial transfer of rights in some jurisdictions and the assignment of financial rights in other jurisdictions should be addressed in the related commentary.

D. General Provisions

Recommendation 2 and paragraphs 24 and 25

36. A view was expressed that draft recommendation 2 did not reflect the guidance in the related commentary which provided that States wishing to prohibit an UNLLO from engaging in certain regulated industries, such as banking and microcredit industries, could enumerate the industries and activities in which an UNLLO may not engage. The prevailing view was that since the draft recommendation aimed at ensuring the broad scope of activities in which an UNLLO could engage, it should not expressly make such introduction. It was also noted that the related commentary made the point sufficiently clear.

37. As to the concern that the use of the rather synonymous terms “business” and “commercial” could appear redundant, it was noted that they would not only support the broad scope of activities in which an UNLLO could engage, but also operate to exclude non-business and non-commercial activities.

38. With respect to paragraph 24, it was noted that the last two sentences seemed to confuse the statutory purpose and legal purpose of an UNLLO. A suggestion was made to replace the last two sentences with text along the following lines: “with regard to the purpose clause, the guide leaves it to the members of the UNLLO to decide whether or not to include a clause to this effect in their organizational rules, when States do not make this indication mandatory in their legislation”. No support was expressed for this suggestion.

39. After discussion, the Working Group approved recommendation 2 and the related commentary as drafted.

Recommendation 3 and paragraphs 26 to 28

40. While a proposal was made to remove from draft recommendation 3 the phrase “distinct from its members” as it would be redundant, it was generally felt that such possibly superfluous addition would in fact be an articulation of the fundamental concept of separate legal personality, which might not be a universal standard.

41. The Working Group approved recommendation 3 as drafted.

42. It was suggested that paragraph 28 confirming the silence of the draft guide on domestic taxation policy in respect of the legal form of an UNLLO should be either placed in the introduction of the draft guide or deleted since it referred to a general issue while the preceding paragraphs dealt with the distinct legal personality of an UNLLO vis-à-vis its members. It was pointed out that in a number of countries, taxation would be triggered according to the business structure and be of particular importance to simplified entities.

43. The Working Group requested the Secretariat to draft a paragraph on taxation that might be inserted in the introductory part of the guide and accordingly make necessary adjustments to paragraph 28, including a reference thereto.

Recommendation 4 and paragraphs 29 to 33

44. While support was expressed for retaining the current text in draft recommendation 4, a suggestion was made to draft a new recommendation or commentary to specify whether a member who acted on behalf of the future UNLLO during its formation could be held personally liable for such acts and also whether such member and a third party could contractually agree for an UNLLO, once formed, to assume all or part of their personal obligations incurred during the formation of the UNLLO. In response, it was noted that in some legal systems an UNLLO might not be permitted to take over the personal obligations of a member towards a third party incurred prior to the formation of the UNLLO. It was also noted that these issues were closely linked to draft recommendation 8 concerning the formation of an UNLLO and

therefore could be reflected in the part of the commentary related to draft recommendation 8 instead.

45. Given that paragraph 32 already addressed issues concerning contracts entered into with a third party before the formation of the UNLLO, it was proposed that the paragraph could be split into two parts and the second part – which discussed whether contracts entered into with a third party before the formation of the UNLLO may give rise to personal liability of the members and whether the UNLLO would assume the rights and obligations negotiated on its behalf – would include a reference to draft recommendation 8 dealing with the formation of the UNLLO. There was agreement for this proposal.

46. In respect of paragraph 29, a suggestion was made to delete the reference to misuse or fraudulent use by the members of the legal personality of the UNLLO. It was explained that paragraph 33 already addressed a very similar issue but in a clearer manner. Another suggestion was made to revise the last sentence in paragraph 29 so that it would become clearer that draft recommendation 4 included a mandatory provision only “in the sense that limited liability of members cannot be denied in whole by a provision in the organization rules of the UNLLO”. The Working Group did not take a decision on this suggestion at this stage. After discussion, there was support for deleting the phrase “except in cases of misuse or fraudulent use by the members of the legal personality of the UNLLO” in paragraph 29. It was further noted that paragraph 33 may be slightly amended (as appropriate) to consider the content of the deleted phrase.

47. In respect of paragraph 33, a concern was expressed about the use of “piercing the corporate veil” as it is not a concept used in all legal systems and thus not a neutral terminology. Support was expressed for deleting the reference to “piercing the corporate veil” in that paragraph.

Recommendation 5 and paragraphs 34 to 37

48. The Working Group approved recommendation 5 and the related commentary as drafted.

Recommendation 6 and paragraphs 38 to 40

49. A proposal to revise draft recommendation 6 to indicate that the UNLLO should use its acronym or other abbreviation in all of its correspondence was not taken up by the Working Group. It was noted that it would be for the domestic law of the States to determine whether this would be mandatory for the UNLLO.

50. The Working Group also heard suggestions to modify paragraph 39 as follows:

(i) Replacing “all correspondence” with “negotiable instruments, contracts, invoices and purchase orders for goods and services”;

(ii) Replacing the second sentence of paragraph 39 along the following lines: “Appropriate sanctions will be determined by courts on the basis of the facts and circumstances of the case”; and

(iii) Deleting the commentary in the second last sentence which appeared to suggest that the use of a distinctive acronym or abbreviation in all correspondence may be burdensome for an UNLLO. In this regard, a query was made as to whether the reference to “increasing its administrative cost of compliance and verification” was supported by evidence.

51. There was some support for the changes, although the importance that third parties were made aware that the UNLLO was a limited liability entity was noted. A concern was also expressed that replacing the term “all correspondence” with a specific list of documents may not be desirable as the list may not be exhaustive. After discussion, the Working Group expressed its preference for including subparagraph (ii) above in the commentary. It was also felt that the last part of paragraph 39 should be reformulated to further emphasize the importance for the

UNLLO to use a phrase or abbreviation that identifies itself as an UNLLO as much as possible in its business dealings, without indicating that this may be burdensome for an UNLLO.

Recommendation 7 and paragraphs 41 to 44

52. A proposal to revise draft recommendation 7(a) was not taken up. A concern was expressed that the meaning of draft recommendation 7(b) was unclear as to whether the law should permit UNLLOs with only natural persons, UNLLOs with only legal persons, or UNLLOs with at least one natural and one or more legal persons. It was explained that the purpose of the draft recommendation was to better address States' concerns of legal persons being members of an UNLLO. It was also noted that draft recommendation 7(b) was sufficiently permissive so that each State could decide for itself whether to allow UNLLOs with only legal persons.

53. In this context, a suggestion was made to address the question of whether an UNLLO itself could become a member of another UNLLO or legal person or otherwise be involved in the formation thereof. It was generally felt that it would be at the discretion of the respective States and better explained in the related commentary rather than in the draft recommendation 7 itself.

54. The Working Group agreed on draft recommendation 7(b) in substance, but requested the Secretariat to make the options in paragraph 52 above clearer in the text of the recommendation and to include in the commentary a brief account of the event in which an UNLLO invests in another to become a member of the latter.

Recommendation 9 and paragraphs 47 to 53

55. With respect to footnote 86, a view was expressed that a separate recommendation on information of the UNLLO that is to be made public should be included in the draft legislative guide, rather than a reference to the UNCITRAL Legislative Guide on Key Principles of a Business Registry (2019) ("Business Registry Guide"). It was explained that the Business Registry Guide was applicable to the registration of all types of businesses and was not limited to the registration of an UNLLO. As information to be made public would differ among different types of business entities, it was stated that it would make more sense to list such information in the draft legislative guide. It was further explained that the draft legislative guide on an UNLLO was a separate document from the Business Registry Guide and some States might decide to adopt the draft legislative guide only if they already had a sufficiently functioning business registry system. For those States it may be useful to include a discussion on the information necessary to form an UNLLO in the draft legislative guide. The importance to require information on the identity of the founding members of an UNLLO was emphasized.

56. In this context, a suggestion was made to insert a new recommendation 9bis which would provide that "[t]he law should specify which information of the UNLLO shall be made public, if a list of such information is not included in the legislation on business registry." In response, it was said that the requirement in draft recommendation 29 for the UNLLO to keep a list of "members and beneficial interest owners" could help address the concern expressed regarding information on the identity of the founding members of an UNLLO. It was also pointed out that the current wording in paragraph 53 already provided that "the Guide takes the view that the information required for the formation of the UNLLO should be publicly available". No support was expressed for a new recommendation 9bis. As an alternative, a suggestion was made to include a cross reference to paragraph 128 which elaborated on the disclosure requirements for an UNLLO in the context of draft recommendation 29.

57. With respect to the text of draft recommendation 9, a suggestion was made to insert the phrase "at least" in the second sentence of the chapeau to ensure that the list of information required was not a closed list. Another suggestion was made to expand the list to include information concerning the identity of the registrant and

unique identifier of the UNLLO so as to avoid potential inconsistency between the draft legislative guide and recommendation 21 in the Business Registry Guide. While some support was expressed for revising draft recommendation 9 in line with the Business Registry Guide, it was emphasized that the relevant wording in the Business Registry Guide would need to be amended in order to fit the context of UNLLO.

58. After discussion, the Working Group agreed to insert a cross reference to paragraph 128 in the related commentary of the draft legislative guide and considered to revise draft recommendation 9 in line with recommendation 21 in the Business Registry Guide.¹³

59. The Working Group continued with its deliberations on draft recommendation 9. A revised text of the recommendation, mirroring recommendation 21 in the Business Registry Guide, was proposed along the following lines: “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; (c) the identity of the registrant(s) [or: the identity of the person who registers the business]; (d) the identity of each person who manages the UNLLO; and (e) [the legal form of the business and] its unique identifier, if such an identifier has already been assigned.”

60. A suggestion was made that paragraph (e) of the proposed text should not require the legal form of the business since paragraph (a) already made clear that the business being registered would be an UNLLO. As to paragraph (c), it was generally felt that the language should follow that of recommendation 21(c) in the Business Registry Guide. The Working Group thus decided to delete “The legal form of the business and” in paragraph (e), confirmed paragraph (c) to read “The identity of the registrant(s)”, and approved the other paragraphs of the revised draft recommendation 9.

61. A suggestion was reiterated to insert “at least” into the second sentence of the chapeau of the draft recommendation. It was added that such insertion would make clear that States could require further information. Although support was expressed by some delegations, others were of the view that the addition of “at least” would not be necessary since the first sentence already reflected that the recommendation only provided for the minimum information necessary for the formation of an UNLLO. It was pointed out that the related commentary was sufficiently clear on this issue. It was also noted that the recommendation and the related commentary should be taken together and read as a whole. While it was added that the use of “include” in the chapeau indicated the permissiveness and interposing “at least” could even dilute the message conveyed in the commentary, another view was that the current language “Such information should include” might cause the list to be seen as a closed one due to linguistic differences.

62. The Working Group approved the chapeau of draft recommendation 9 in substance but requested the Secretariat to revise its drafting in order to better account for the States’ discretion as provided in paragraph 50.

63. Continuing its deliberations on draft recommendation 9, the Working Group considered a new revised text. It was generally felt that the recommendation should not be read to encourage States to require more information than that listed therein.

64. After discussion, the Working Group approved draft recommendation 9 along the following lines:

“The law should require the following information and supporting documents for the registration of the UNLLO:

- (a) The name of the UNLLO;

¹³ The Secretariat has deleted the sentence “The Working Group agreed to postpone further discussion on this matter to a later stage” at the end of this paragraph, since it was redundant in light of paragraph 59.

- (b) The business address or, when the business does not have a standard form address, precise geographical location of the UNLLO;
- (c) The identity of the registrant(s);
- (d) The identity of each person who manages the UNLLO; and
- (e) Its unique identifier, if such an identifier has already been assigned.

The law should keep additional information required, if any, to a minimum.”

E. Organization of the UNLLO

Recommendation 10 and paragraphs 54 to 61

65. A suggestion was made to remove paragraph 55(d) as the status quo should naturally be maintained in “situations in which a decision cannot be reached” by the members or the managers and there would exist no criteria to resolve such situations. It was, however, pointed out that alternative dispute resolution mechanisms could be relevant in this context since members might not be able to arrive at an amicable resolution of disputes concerning the governance and operation of the UNLLO. In this regard, the Working Group requested the Secretariat to improve the language of paragraph 55(d).

66. With respect to draft recommendation 10(a), a suggestion was made that it should make clear that organization rules should be recorded. It was explained that recording organizational rules, either in the internal record of the UNLLO or the State’s business registry, would be in the interest of the UNLLO members and third parties, including public authorities. In response, a concern was raised that such suggestion did not take into account the fact that some legal systems allowed the organization rules to be recorded orally. In this connection, it was pointed out that paragraphs 57 and 58 already adequately reflected the decisions of the Working Group on this issue. As an alternative, it was suggested that the commentary in paragraph 126 in relation to draft recommendation 29 could be revised to highlight the importance of record-keeping of the organization rules. Although some support was expressed for this suggestion, the Working Group considered it appropriate to discuss this issue at a later stage in the context of draft recommendation 29.

67. Another suggestion was made to replace the word “may” in draft recommendation 10(a) by the word “shall”, considering that members should not exercise any discretion in taking the form of the organization rules as indicated in the law. While there was agreement that members should not have any discretion in this respect, it was noted that States should be permitted to provide for multiple options and not be confined to choose only a single form. The Working Group decided to replace draft recommendation 10(a) with a text along the following lines: “Indicate what the allowable forms of the organization rules are”.

68. In connection with draft recommendation 10(b), reference was made to the suggestion included in footnote 97 of document [A/CN.9/WG.I/WP.118](#) to insert “other applicable law” to clarify that members could not derogate by agreement from other applicable laws of the State concerned. A proposal to make clear that organization rules “may address any matter subject to the law” was broadly supported.

69. After discussion, the Working Group approved draft recommendation 10(b) as follows: “Provide that the organization rules may address any matters relating to the UNLLO subject to the law.”

F. Membership rights and decision-making in the UNLLO

Recommendation 11 and paragraphs 62 to 64

70. A concern was expressed with respect to the phrase “financial rights to partake in the profits and assets of the UNLLO during the existence” in the second sentence of paragraph 63. It was suggested that reference should be made to the financial rights to “receive distributions from the UNLLO” instead as the members would not be able to directly take the assets of the UNLLO without a declaration of distributions in accordance with draft recommendation 22. Support was expressed for the removal of “assets”.

71. As to paragraph 64, a suggestion was made to delete the phrase “partake in its losses” in the second sentence as members of an UNLLO should not have such legal obligation towards the UNLLO. It was noted that the members’ liability should not go beyond their contributions and that the limited liability should be consequential of members being separate from the UNLLO. While it was generally felt that the members would suffer losses in one way or another, if the business failed, some delegations felt that “partake in the losses” was not the most precise term. The Working Group approved recommendation 11 as drafted and requested the Secretariat to redraft paragraphs 63 and 64 so as to avoid any reference to partake in “assets” and to replace the expression “partake in the losses” with a more neutral expression, which can be understood in all legal traditions and does not induce any ambiguity as to the limited liability of the partners.

Recommendation 12 and paragraphs 65 to 67

72. A suggestion was made to delete paragraphs (b), (c), and (d) of draft recommendation 12 as these matters would have to be stipulated in the organization rules and thus were already covered by paragraph (a). An opposite view was expressed highlighting the importance of conveying a clear message by listing the important matters reserved to the decision of the members. Support was expressed for a proposal to insert the word “particularly” at the end of paragraph (a) and to list paragraphs (b), (c) and (d) as sub-items under paragraph (a).

73. With respect to the text of paragraph (c) of the draft recommendation, it was recalled that the Working Group had agreed to replace the term “share” by the phrases “rights of the members” or “rights and duties of the members”, as appropriate. A query was raised as to which phrase would replace the term “share” in this paragraph. A view was expressed that the phrase “rights of the members” would be more appropriate given that the original intention of paragraph (c) was to address the situation when the members wished to deviate from the principle of equality regarding their rights in draft recommendation 11. It was, however, noted that even this phrase might be too broad as only financial rights were of relevance in this context. An opposite view was expressed in favour of the other phrase “rights and duties of the members”, taking into account the possibility of loss sharing among the members.

74. With respect to the text of paragraph (f) of the draft recommendation, a proposal for referring to “voluntary dissolution” instead of “dissolution” was not taken up.

75. After discussion, the Working Group agreed to revise paragraph (a) as discussed in paragraph 72 above and to amend paragraph (c) along the lines of: “the rights of the members of the UNLLO, if not equal.”

Recommendation 13 and paragraphs 68 to 69

76. It was noted that the list of matters reserved to the members in the paragraphs of draft recommendation 13(a) in essence were identical to the list in draft recommendation 12. Support was expressed for the proposal that draft recommendation 13(a) should avoid repetition and simply refer to the list in draft recommendation 12. Several proposals were put forward and a preference was

expressed for the phrase “decisions on matters reserved to the members under recommendation 12”.

77. With respect to draft recommendation 13(b), it was pointed out that it would be redundant to refer to “by number” since the term “majority” was defined in the “Terminology” section to mean “more than half of the UNLLO members determined by number”. Support was expressed for such deletion. In this connection, support was also expressed for a proposal to amend the definition of “majority” to mean “more than half of the UNLLO members determined by the number of the members”.

78. With respect to draft recommendation 13(b), noting that it provided that any other decisions were to be taken by a majority of the members, it was pointed out that this would conflict with draft recommendation 17(a) under which managers were responsible for all matters that were not reserved to the members. The reason for such conflict was associated with the fact that the current version of the draft legislative guide contemplated three different mechanisms for decision-making in relation to (i) important matters that were reserved to the members as listed in draft recommendation 13(a), (ii) any other decisions as mentioned in draft recommendation 13(b), and (iii) all matters that were not reserved to the members as referred to in draft recommendation 17(a). In this respect, a suggestion was made to insert the phrase “reserved to the members by the law or the organization rules” after the phrase “any other decisions” in draft recommendation 13(b) to address the conflict between items (ii) and (iii) as listed above.

79. A suggestion was also made to include the admission of new members as an additional matter reserved to the decisions of the members by unanimity. While the importance of this issue was widely acknowledged, some delegations were of the view that such addition would not be necessary given the non-exhaustive nature of the list of matters reserved to the decisions of the members by unanimity. Other delegations suggested having a separate recommendation on the issue of the admission of new members, or at least explicitly discussing this issue in the commentary to recommendation 12 as a likely candidate of additional issue to be reserved to the members of the UNLLO.

80. The Working Group agreed to redraft recommendation 13(a) along the following lines: “[d]ecisions on matters reserved to the members under draft recommendation 12 are to be taken by unanimity”. The Working Group also agreed to delete the phrase “by number” in paragraph (b) and to make further editorial changes to this paragraph, as appropriate, so as to ensure consistency with other recommendations in the draft legislative guide.

81. Resuming its discussion on possible inconsistency between draft recommendations 13 and 17, the Working Group heard the following drafting proposal on draft recommendation 13: “The law should specify that unless otherwise agreed in the organization rules: (a) decisions on the UNLLO which are reserved to the members pursuant to this law, in accordance with recommendation 12, are to be taken by unanimity unless the law provides for a special majority rule; and (b) any other decisions which are reserved to the members pursuant to the organization rules are to be taken by a majority of members”. The Working Group approved text along those lines as it felt that such drafting would avoid conflict between draft recommendations 13 and 17.

G. Management of the UNLLO

Recommendation 14 and paragraphs 70 to 73

82. Different views were expressed for proposals to include a reference to the legal requirements for persons in a management position in the text of this recommendation. Under these proposals, draft recommendation 14 would be revised to make clear that the UNLLO would be managed exclusively by all of its members “who meet the legal requirements for those in a management position”, and that the

members would not be allowed to agree otherwise in the organization rules. Along those lines, another proposal was put forward to split draft recommendation 14 into two paragraphs so that it would read as follows: “The law should provide that: (a) unless otherwise agreed in the organizational rules, the UNLLO is managed exclusively by all of its members; and (b) persons who manage the UNLLO must meet the legal requirements for those in a management position.”

83. While some delegations expressed support for that proposal, others were of the view that the proposed paragraph (b) should not appear in draft recommendation 14 and should instead be moved to draft recommendation 16 or comprise a new stand-alone recommendation. Doubts were expressed for the necessity and desirability of referring to legal requirements in paragraph (b), noting that it would require adding similar references in other recommendations, such as draft recommendation 16 concerning designated managers. As an alternative, a suggestion was made to include a reference to legal requirements for managers and designated managers in the relevant parts of the Terminology section. However, in the view of some delegations, adding a new recommendation on the need for the States to specify the legal requirements for managers in the law would be the most appropriate way to address this issue.

84. With respect to the issue of whether a legal person could be appointed as a manager of an UNLLO, it was generally felt that this issue should not be dealt with in the recommendation itself; instead, the related commentary could explain that the States should specify in the law whether a legal person that has become a member could be appointed as a manager. In this respect, it was noted that in some legal systems legal persons could be appointed as managers and they typically would appoint a natural person to deal with matters concerning day-to-day operations of the company. It was, however, pointed out that the legal requirements for managers as specified by the States would also address this issue.

85. After discussion, the Working Group decided to draft a new recommendation to specify that the law should provide that persons who manage the UNLLO must meet the legal requirements for those in a management position, and to clarify in the related commentary that the draft legislative guide would leave to the States to decide what these legal requirements should be.

86. As to the current draft of recommendation 14, a suggestion to replace the phrase “unless it is indicated in the organization rules” by “unless members agree in the organization rules” was broadly supported, while a suggestion to delete the word “exclusively” was not taken up. With that change the Working Group approved the draft recommendation. The Working Group also supported a proposal to replace the term “external manager” by “a non-member manager” in the second sentence of paragraph 70 of the commentary and for inserting the phrase “someone else as” after the word “appoints” in paragraph 72.

Recommendation 15 and paragraphs 74 to 77

87. The Working Group supported a proposal to delete draft recommendation 15(b) granting members “joint and equal rights” as managers as it would contradict draft recommendation 18 according to which “each manager individually has the authority to bind the UNLLO”. With that change the Working Group approved the revised draft recommendation.

88. With regard to the commentary to draft recommendation 15 and the use of the term “manager(s)” in the case of an UNLLO managed by all of its members exclusively, it was recalled that the Working Group had previously decided not to use such term. It was further noted that otherwise, a definition of “manager” encompassing both managers of UNLLOs managed by all members exclusively and designated managers should be provided. The Working Group acknowledged this concern and requested the Secretariat to eliminate any ambiguity in the use of the term “manager” in the draft legislative guide.

Recommendation 16 and paragraphs 78 and 79

89. The Working Group heard a proposal to revise the draft recommendation 16 along the following lines: “The law should provide that, when the UNLLO is not managed by all of its members exclusively, one or more designated manager(s) may be appointed and removed by a majority decision of the members, unless otherwise agreed in the organization rules.” A concern that the proposed text did not seem to address UNLLOs managed by some of the members together with external managers was not shared by some delegations given that the definition of “designated managers” already envisaged a combination of member and non-member managers. While a view was expressed against repeating in the recommendation what was already included in the definition, the Working Group supported the text proposed above.

90. With regards to the commentary, it was suggested that the first sentence of paragraph 79 should be divided into two parts, since it addressed two different concepts: appointing a new manager and listing the manager’s identity pursuant to draft recommendation 9(c). It was further noted that the second concept in that sentence would benefit from redrafting along the lines of: “Some States might require the identity of the manager to be provided to the business registry” (with a reference to para. 52 of [A/CN.9/WG.I/WP.118](#)).

Recommendation 17 and paragraphs 80 and 81

91. The Working Group approved recommendation 17 and the related commentary as drafted.

Recommendation 18 and paragraphs 82 to 84

92. Several suggestions were made to redraft the first sentence of this recommendation. Support was expressed for replacing the references to the terms “each” and “individually” by “every” and also for inserting the phrase “in the organization rules” after “unless otherwise agreed”. Another suggestion was made to define the term “manager”, but one delegation opposed, stating that such person could generally be understood as a person who manages the UNLLO. Another suggestion to specify that a manager should only bind the UNLLO “for the purposes of its business” was also not supported given that such indication might cause confusion since business purposes of an UNLLO would not necessarily be evident to third parties.

93. As to the second sentence, a suggestion was made to replace “proper notice” with the qualification consistently found in other UNCITRAL texts, “unless the third party knew or ought to have known”. While some support was expressed, it was pointed out that such deviation from requiring “proper notice” would weaken the third party protection the draft legislative guide had been seeking to provide. It was also added that the level of knowledge required would differ from one jurisdiction to another. A concern was however expressed that reference to “proper notice” in draft recommendation 18 might lead to differing interpretations and it was suggested that the last sentence of paragraph 61 could make its place into the recommendation. The prevailing view was that the related commentary, in particular the last sentence of paragraph 84, already made clear that it would be for the States to determine how notice to third parties should be provided. It was generally felt that the aim of the recommendation, which was at providing third-party protection, was adequately addressed.

94. After discussion, the Working Group agreed to separate the two sentences of draft recommendation 18 because it could better emphasize third-party protection and also clarify the non-mandatory nature of the first part and the mandatory nature of the second part and approved text as follows: “The law should provide that: (a) every manager has the authority to bind the UNLLO, unless otherwise agreed in the organization rules; and (b) restrictions upon such authority will not be effective against third parties dealing with the UNLLO without proper notice.”

Recommendation 19 and paragraphs 85 to 90

95. In the first line of paragraph 86, it was pointed out that the phrase “a claim of fiduciary duty” should be corrected to “a claim for breach of fiduciary duty”.

96. In the second sentence of paragraph 87, a concern was expressed that the word “generally” might be confusing as the exception (e.g., the possibility for a member to bring a derivative claim on behalf of the UNLLO) was only discussed towards the end of this paragraph. Support was expressed for the suggestion to insert a footnote after the word “generally” to explain the exception. With respect to the same sentence, it was suggested that the reference to “a member” in that context should be revised to make clear that it referred to a member acting as a manager. In the third and fourth sentences of paragraph 87, a suggestion was made to replace the term “the manager” by “a manager” or “managers” as such term should contemplate any manager.

97. The Working Group approved recommendation 19 as drafted and requested the Secretariat to revise the relevant parts of paragraphs 86 and 87 as suggested in paragraphs 95 and 96 above.

H. Members’ contribution to the UNLLO**Recommendation 20 and paragraphs 91 to 95**

98. With respect to draft recommendation 20, a proposal to delete the phrase “in the organization rules” in square brackets was not taken up because according to some delegations any subsequent change in contributions should be made by amending the organization rules. The Working Group agreed to retain draft recommendation 20 without the square brackets.

I. Distributions**Recommendation 21 and paragraphs 96 and 97**

99. The Working Group recalled its decision to replace the term “share” by the phrases “rights of the members” or “rights and duties of the members”, as appropriate. In this context, it was noted that the phrase “in proportion to their respective share of the UNLLO” in the draft recommendation should be revised to “in proportion to their rights in the UNLLO”.

100. A suggestion to replace the word “rights” by “financial rights” did not receive support. Another suggestion was made to redraft this recommendation to provide for equal distribution as a default rule since the members’ rights would be equal pursuant to draft recommendation 11. A preference was expressed for retaining the principle as currently stated, noting that the commentary made clear that distribution would be made evenly when members agreed not to deviate from the principle of equality in draft recommendation 11.

101. The Working Group approved this recommendation with the change made to the term “share” as mentioned in paragraph 99 above.

Recommendation 22 and paragraphs 98 and 99

102. A view was expressed that the conjunction between paragraphs (a) and (b) should be “or” instead of “and”, since a distribution should be prohibited when it violated either of these two standards. It was explained that they presented two different commencement standards for insolvency proceedings under national laws and this recommendation should allow the States to adopt either or both of them. The Working Group agreed to replace the word “and” by “or” and with that change it approved the recommendation. The Working Group also supported the proposal to explain in the commentary that States are allowed to adopt both tests.

Recommendation 23 and paragraphs 100 to 103

103. The Working Group approved recommendation 23 and the related commentary as drafted.

J. Transfer of rights**Recommendation 24(b) and paragraphs 104 to 109**

104. The Working Group continued its discussion on draft recommendation 24 focusing on paragraph (b) and related commentary. As a general comment, it was noted that the expression “partake in the profits and losses” in the first sentence of paragraph 104 should be amended to reflect the change to be made to paragraph 64 (see para. 71 above) and that the word “percentage” should be replaced with a more appropriate term.

105. While different views were expressed as to the placement and wording of paragraph (b) of the recommendation, it was generally felt that the recommendation should stipulate a principle of non-automatic dissolution in case of the death of a member to preserve the substance of the UNLLO and establish protection of the surviving member(s) by providing the option to veto the admission of the successor(s) of the deceased as member(s). It was pointed out that in both cases of single and multiple member UNLLOs, the membership of the deceased should be transferrable to the successor(s) in accordance with the applicable law and thus, the last sentence of recommendation 24(b) should precede the second with appropriate changes. It was added that the related commentary could make clear that laws other than inheritance law could be of relevance.

106. With respect to the necessary safeguards to protect the surviving member(s), it was noted that although the particulars could vary depending on the jurisdiction, the surviving member(s) would have to pay out the membership of the deceased’s worth to the successor(s) in the event that they do not admit the successor(s) as member(s). As to the concern that disputes would likely arise in negotiating a figure, it was said that relevant dispute resolution mechanism should be triggered in case of a deadlock. It was added that the related commentary could elaborate on some of the approaches States could take, including the possibility for the successor(s) to seek purchasers other than the surviving partner(s) and contemplation of the case of the surviving partner(s) having a minority of the total membership.

107. The Working Group agreed that draft recommendation 24(b) should provide that the death of a member shall not cause the dissolution of the UNLLO and that the membership of the deceased shall be transferrable to any successor(s) in accordance with the law(s) of the State. The Working Group requested the Secretariat to revise the related commentary accordingly and to consider whether the safeguards for remaining members (e.g. possibility of members to buy out successor(s)) should be set out in recommendation 24(b) or in the commentary. It was observed that it is generally easier to reflect different possible safeguards in the commentary.

K. Dissociation or withdrawal**Recommendation 25 and paragraphs 110 to 117**

108. The Working Group heard a suggestion to divide draft recommendation 25 into two parts, since the recommendation discussed two different concepts: withdrawal from the UNLLO and payment of a fair value. It was also said that the phrase “in the organization rules” should be added after “unless otherwise agreed” for drafting consistency with the other recommendations. A clarification was sought as to whether “unless otherwise agreed in the organization rules” would be placed in the first or the second part of the recommendation if it were to be divided. While different views were expressed, including having a reference to the last sentence of paragraph 114, a

preference was noted in favour of permitting the members to contract out of the default rule only in relation to the payment of a fair value as referred to in the second part of the recommendation.

109. With respect of the first part of this recommendation, a query was raised as to whether “reasonable cause” would be a mandatory requirement for withdrawal with or without the members’ agreement. In response, it was explained that the intention of this recommendation was to allow the members to withdraw upon reasonable cause in the absence of the members’ agreement. A suggestion that States should be encouraged to provide a definition of “reasonable cause” was not taken up as such concept was often subject to judicial interpretation. Instead, a suggestion to include additional examples of “reasonable cause” in the commentary was broadly supported.

110. After discussion, the Working Group agreed to divide the draft recommendation in two parts and place “unless otherwise agreed in the organization rules” in the second part and, with those changes, it approved recommendation 25.

111. As to the remainder of the commentary, the Working Group supported deleting the term “dissociation” from the title of the section and the relevant paragraphs, since “dissociation” and “withdrawal” seemed to be used in an interchangeable way in the commentary. A suggestion to remove reference to the members’ expulsion was not taken up and the Working Group was reminded that at its past session it had agreed to refer to expulsion in the context of withdrawal, without providing for a specific recommendation. The Working Group was of the view that the discussion on expulsion in the commentary should be separated from that on withdrawal and requested the Secretariat to implement that revision in the next iteration of the draft guide.

L. Conversion or restructuring

Recommendation 26 and paragraphs 118 to 120

112. It was proposed that recommendation 26(b) could be redrafted along the following lines: “ensure protection of third parties affected by a conversion or restructuring”. There was support for that proposal and, with that revision, the Working Group approved the draft recommendation and related commentary.

113. The Working Group also supported a suggestion to revise the definition of restructuring in the “Terminology” section for improved clarity so that the last part of this definition would read along the following lines: “other fundamental changes qualified as restructuring in domestic legislation”.

M. Dissolution and winding-up

Recommendations 27 and 28 and paragraphs 121 to 125

114. The Working Group supported the inclusion of a draft recommendation 27 (a)(v) providing for the dissolution of the UNLLO when there was no member left. It was felt that this would ensure consistency with draft recommendation 7(a) and improve clarity of the legislative guide on the topic of dissolution.

115. In relation to draft recommendation 27(a)(iii), the Working Group was of the view that the commentary should include a discussion to indicate that “the rendering of a judicial or administrative decision that the UNLLO is dissolved” might also cover the deadlock situation where the surviving members could not agree on how the UNLLO should continue after the death of a member. It was said that the commentary may also include reference to draft recommendation 24(b), as appropriate.

116. A comment was made that paragraph 112 (in the section on withdrawal), also dealing with dissolution, attached to the term a negative connotation and the Working Group requested the Secretariat to redraft that paragraph in a more neutral way.

117. As to draft recommendation 28, it was noted that “dissolution” in certain jurisdictions was the last step of the process and that would come after winding-up, while the language in the commentary and in the draft recommendation seemed to suggest that dissolution would take place before winding-up. It was thus suggested to use more neutral language, such as “order of the court to dissolve”, both in the draft recommendation and in the commentary, as appropriate. Another proposal was to delete the phrase “for the protection of third-parties” at the end of draft recommendation 28. It was said that winding-up was a broad concept and the protection of third parties was only one aspect of it, which would be better addressed in detail in the commentary.

118. The Working Group supported both suggestions and, with those revisions, it approved recommendation 28 and related commentary.

N. Record-keeping, inspection and disclosure

Recommendations 29 and 30 and paragraphs 131 to 135

119. In order to stress protection of third parties, the Working Group agreed with a proposal to add a sentence at the end of paragraph 126 along the following lines: “in this regard, the importance to keep records of the organization rules should be again emphasized (see para. 58 above)”.

120. The Working Group also took up a suggestion to improve the drafting of recommendation 29 as follows: (a) revise the chapeau as: “the law should provide that the UNLLO must keep certain records including of”; and (b) delete the phrase “a list of” in paragraph (c) and the phrase “records concerning” in paragraph (e).

121. A proposal to add qualifying terms such as “important records” or “a few records” or similar concepts in draft recommendation 29(f) was not taken up, but there was wide support for clarifying in the commentary that the UNLLO should not be required to keep records of its day-to-day operations, but only of its most important activities.

122. The Working Group approved draft recommendation 29 and related commentary with the revisions noted in paragraphs 119 to 121 above.

123. As to draft recommendation 30 and related commentary, it was noted that the right of the UNLLO members to receive information on how the UNLLO was managed and to inspect its records should not disrupt the daily operations of the UNLLO. A proposal was made to revise the related commentary so that it would reflect the balance between the right of the members to inspect records and the need for the UNLLO to work efficiently. The Working Group supported this proposal and requested the Secretariat to revise the commentary accordingly.

O. Dispute resolution

Recommendation 31 and paragraphs 131 to 135

124. The Working Group approved recommendation 31 and the related commentary as drafted.

P. Model Organization Rules

Appendix II

125. The Working Group considered the structure, purpose, format and scope of the draft Model Organization Rules and agreed as follows:

(a) Structure: there was broad support for the structure of the draft Model Organization Rules which was included in [A/CN.9/WG.I/WP.118](#) as annex II;

(b) Purpose: it was generally felt that such rules should be drafted for States, instead of end users, with a view to providing an example for States to consider when creating their own model rules for end users. A suggestion was made to clarify this aspect in an introductory note to the Model Organization Rules. Support was expressed for this suggestion;

(c) Format: for the sake of simplicity, a preference was expressed in favour of only one set of such rules for multi-member UNLLOs managed by all members exclusively provided that footnotes were included to indicate which provisions might differ in the context of single member UNLLOs and multi-member UNLLOs managed by designated managers; and

(d) Scope: it was noted that there existed different types of rules in the draft legislative guide, including (a) mandatory rules which members could not deviate from, (b) default rules, and (c) non-mandatory rules which members should decide on (e.g., value of contribution). A proposal in favour of a broad scope of the draft Model Organization Rules which would not be limited to only default rules was taken up. The importance of including mandatory rules and making clear that members could not amend those rules was emphasized.
