

UNCITRAL Legislative Recommendations on Limited Liability Enterprises

A. General provisions

Recommendation 1: The law should provide that a Limited Liability Enterprise (“LLE”) is governed by this law and by the organization rules.

Recommendation 2: The law should provide that an LLE may be formed for any lawful business or commercial activity.

Recommendation 3: The law should provide that the LLE 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 LLE solely by reason of being a member of that LLE.

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

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

B. Formation of the LLE

Recommendation 7: The law should:

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

(b) Specify whether a LLE may only have natural persons as members and if not, the extent to which legal persons are permitted.

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

Recommendation 9: The law should:

(a) Require the following information and supporting documents for the registration of the LLE:

(i) The name of the LLE;

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

(iii) The identity of the registrant(s);

(iv) The identity of each person who manages the LLE; and

(v) Its unique identifier, if such an identifier has already been assigned; and

(b) Keep additional information required, if any, to a minimum.

C. Organization of the LLE

Recommendation 10: The law should:

(a) Specify the allowable forms of the organization rules; and

(b) Provide that the organization rules may address any matters relating to the LLE subject to the law.

D. Members' rights and decision-making in the LLE

Recommendation 11: The law should establish that unless otherwise agreed in the organization rules, members have equal rights in the LLE irrespective of their contributions, if any.

Recommendation 12: The law should:

Specify the decisions on the LLE to be reserved to the members, which, at a minimum, should include decisions on:

- (a) Adoption and amendment of the organization rules, in particular:
 - (i) Management structure of the LLE and its modification;
 - (ii) Allocation of rights of the members in the LLE if not equal; and
 - (iii) Member's contributions;
- (b) Conversion and restructuring; and
- (c) Dissolution.

Recommendation 13: The law should specify that unless otherwise agreed in the organization rules:

- (a) Decisions concerning the LLE which are reserved to the members under recommendation 12 are to be taken by unanimity; and
- (b) Any other decisions which are reserved to the members pursuant to the organization rules are to be taken by majority.

E. Management of the LLE

Recommendation 14: The law should provide that the LLE is managed by all of its members exclusively, unless members agree in the organization rules that one or more designated managers shall be appointed.

Recommendation 15: The law should provide that when the LLE is managed by all of its members exclusively and unless otherwise agreed in the organization rules, differences among members on matters concerning day-to-day operations of the LLE should be resolved by a majority decision of the members.

Recommendation 16: The law should provide that, when the LLE is not managed by all of its members exclusively, designated manager(s) may be appointed and removed by a majority decision of the members, unless otherwise agreed in the organization rules.

Recommendation 17: The law should provide that when the LLE is managed by one or more designated manager(s):

- (a) Such managers are responsible for all matters that are not reserved to the members of the LLE pursuant to this law and, where applicable, to the organization rules; and
- (b) Disputes among themselves should be resolved by a majority decision of the managers, unless otherwise agreed in the organization rules.

Recommendation 18: The law should provide that persons who manage the LLE shall meet the legal requirements for those in a management position.

Recommendation 19: The law should provide that:

- (a) Every manager has the authority to bind the LLE, unless otherwise agreed in the organization rules; and

(b) Restrictions upon such authority will not be effective against third parties dealing with the LLE without proper notice.

Recommendation 20: The law should provide that any manager of the LLE owes a duty of care and a duty of loyalty to the LLE.

F. Members' contributions to the LLE

Recommendation 21: The law should establish that members may agree in the organization rules on the type, timing and value of their contributions.

G. Distributions

Recommendation 22: The law should provide that distributions are made to members in proportion to their rights in the LLE unless otherwise agreed in the organization rules.

Recommendation 23: The law should prohibit distributions to any member if upon giving effect to such distribution:

(a) The total assets of the LLE would be less than the sum of its total liabilities; or

(b) The LLE would not be able to pay its foreseeable debts as they become due.

Recommendation 24: The law should provide that each member who received a distribution, or any portion thereof, made in violation of recommendation 23 is liable to reimburse the LLE for this distribution or portion thereof.

H. Transfer of rights

Recommendation 25: The law should provide that unless otherwise agreed in the organization rules:

(a) A member of a LLE may transfer its rights in the LLE when the other members, if any, agree to the transfer; and

(b) The death of a member shall not cause the dissolution of the LLE. In the case of the death of a member, its rights in a LLE shall be transferrable to any successor(s) in accordance with the law(s) of the State.

I. Withdrawal

Recommendation 26: The law should provide that:

(a) Members may withdraw from the LLE upon agreement or reasonable cause; and

(b) Be paid over a reasonable period of time the fair value of their rights in the LLE, unless otherwise agreed in the organization rules.

J. Conversion or restructuring

Recommendation 27: The law should provide the necessary legal mechanisms to:

(a) Facilitate members of the LLE to convert it into another legal form or to restructure it; and

(b) Ensure protection of third parties affected by a conversion or restructuring.

K. Dissolution

Recommendation 28: The law should:

(a) Provide that the LLE shall be dissolved in the following circumstances:

- (i) The occurrence of any event that is specified in the organization rules as causing the dissolution of the LLE;
- (ii) A decision by the members;
- (iii) The rendering of a judicial or administrative decision that the LLE is dissolved;
- (iv) The LLE is left without any member with appropriate legal capacity; or
- (v) Any other event specified in this law; and

(b) Establish the necessary provisions and procedures for the protection of third parties.

Recommendation 29: The law should provide that the LLE shall continue after the occurrence of any of the circumstances specified in recommendation 28 (a) only for the purpose of winding-up.

L. Record-keeping, inspection and disclosure

Recommendation 30: The law should provide that the LLE must keep certain records, including of:

- (a) Information provided to the business registry;
- (b) The organization rules, if and where such rules have been adopted in writing or otherwise recorded;
- (c) Identity of past and present designated managers, members and beneficial interest owners of legal entities, if any, as well as their last known contact details;
- (d) Financial statements, if any;
- (e) Tax returns or reports; and
- (f) The activities, operations and finances of the LLE.

Recommendation 31: The law should provide that each member has the right to inspect and copy records of the LLE and to obtain available information concerning its activities, finances and operations.

M. Dispute resolution

Recommendation 32: The law should facilitate the submission to alternative dispute resolution mechanisms of any dispute concerning the governance and operation of the LLE.