



Colloquium on contractual networks and other forms of inter-firm cooperation

25-26 March 2019
New York UN Headquarters



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BACKGROUND

Micro, small and medium-size enterprises (MSMEs) represent the majority of businesses in several economies of the world and provide an important contribution to sustainable development, as they generate employment and economic growth, and are instrumental in alleviating poverty. Although MSMEs are incredibly varied in nature and their characteristics can be strongly influenced by local economic conditions and cultural traditions, they often face the same challenges, such as: limited access to human and financial resources, limited access to markets and difficulty in adjusting to changing circumstances. Women-run MSMEs often experience those challenges the most. To assist MSMEs in overcoming their vulnerability and harnessing the opportunities offered by domestic and international markets, it is thus important that a “think small first approach” is adopted and needs and expectations of MSMEs are placed at the forefront when policy and legislation are developed.

Since 2013, UNCITRAL has added to its programme work on reducing the legal obstacles faced by MSMEs throughout their life cycle. UNCITRAL Working Group I has been tasked with certain aspects of that topic and, in accordance with the mandate received, the Working Group has begun its work with a focus on the obstacles faced by MSMEs at their establishment, i.e. simplification of incorporation and of business registration.

Various domestic legislative models applicable to MSMEs were presented at the Working Group sessions with a view to providing examples of business forms alternative to the creation of limited liability companies. Some of those models provided for segregation of business assets without requiring the creation of an entity with legal personality that offered limited liability protection. One of the models presented is structured as a multiparty contract between MSMEs (in the same or different jurisdictions) to facilitate sharing of resources among them; provide a means of accessing business opportunities not otherwise available to individual MSMEs; facilitate access to finance for the entity itself and permit sharing of property and of labour among the participating MSMEs. The model has a relatively low level of initial capital, low entry and exit costs for participating MSMEs and a light governance infrastructure.

Taking stock of the examples discussed in the Working Group, at UNCITRAL’s most recent sessions (in 2017 and 2018), a proposal was made that work on a legal instrument regulating cooperation among multiple MSMEs could be added to UNCITRAL’s future work programme. Such a legal instrument would have the potential to bridge the gap between contract law and company law and could complement the current work of the Working Group on an UNCITRAL Limited Liability Organization (UNLLO).

As agreed at UNCITRAL fifty-first session (2018), the Working Group holds this colloquium at which multiparty contracts as well as other legal tools, used in both civil and common law jurisdictions, that permit different forms of MSMEs’ cooperation will be explored. The conclusions of the colloquium will not be determinative but should assist UNCITRAL in evaluating the desirability of taking up work on multiparty contracts that can facilitate MSMEs’ growth.

25 March 2019 (10:00 – 18:00)

10:00-10:30	Registration
10:30-10:45	Welcome address –Anna Joubin-Bret, The Secretary, UNCITRAL
10:45-12:30	<p>1. Challenges faced by MSMEs in the modern economy: reasons behind networks of MSMEs</p> <p>Moderator: Ms. Jeannette Tramhel (<i>Senior Legal Officer, Organization of American States</i>)</p> <p><i>Note: The session aims at setting the context for the colloquium. It will introduce the main economic issues behind the desirability of tools to facilitate and foster MSME business, such as those based upon inter-firm cooperation and contractual networks. For this reason, the words “cooperation” or “networks” are to be understood in a broad manner and not linked to any existing legal concept. The presentations and the open discussion will help identify the main legal issues concerning MSMEs’ cooperation, to be further analyzed and discussed in the following sessions.</i></p> <p>* Global overview of the challenges faced by MSMEs in domestic and international contexts (Ms. Riefqah Jappie, <i>Representative to the United Nations, International Trade Centre</i>)</p> <p>* MSMEs and the Sustainable Development Goals (Dr. Chantal Line Carpentier, <i>Chief, New York Office, United Nations Conference on Trade and Development</i>)</p> <p>* MSMEs’ networks in the global economy (Prof. Christophe Assens, <i>LAREQUOI research center in management, University of Versailles Saint-Quentin-en-Yvelines (Paris Saclay), France</i>)</p> <p>* UNIDO’s support to MSMEs through networking and clustering (Mr. Paul Maseli, <i>Director and Representative of the United Nations Industrial Development Organization to the United Nations, New York</i>)</p> <p>* Platform economy: how the new economy is shaping contract practices of MSMEs (Prof. Eric Vermeulen, <i>Tilburg Law School, Tilburg University, Netherlands</i>)</p>
	12:30-13:00
13:00-15:00	Lunch
15:00-17:15	<p>2. Examples of multiparty contracts creating networks</p> <p>Moderator: Prof. Ethan Leib (<i>Fordham University Law School, USA</i>)</p> <p><i>Note: Economic development is increasingly driving local economies towards global markets prompting business entities of all sizes to join forces to access those markets. Such strategic alliances can result in the creation of corporate entities with high level of integration among the participants or more flexible forms of contractual cooperation. In some cases, those contractual forms of cooperation present features different from the more traditional corporate or contract law approach. The session will discuss examples of those contracts that lead to the creation of networks of enterprises and the corresponding forms of legal architecture behind them.</i></p> <p>* An introduction to contractual networks (Prof. Fabrizio Cafaggi, <i>Council of State, Italy</i>)</p> <p>* The Italian network contract (Prof. Paola Iamiceli, <i>Faculty of Law, University of Trento, Italy</i>)</p> <p>* Contract farming (Prof. Henry Gabriel, <i>Elon University, USA, and member of UNIDROIT Governing Council</i>)</p> <p>* Networks of contracts in the oil and gas industry (Prof. Sheraldine Pinto, <i>Central University of Venezuela, Venezuela</i>)</p> <p>* Foundations of contractual networks in aviation, automotive, and biotech (Prof. Matthew Jennejohn, <i>J. Reuben Clark Law School, Brigham Young University, USA</i>)</p>
	17:15-18:00

17:15-18:00	Open Discussion
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26 March 2019 (10:00 – 18:00)

10:00-12:15	3. Legal tools in various legal traditions to facilitate MSME business
	Moderator: Prof. Sinisa Petrovic (<i>University of Zagreb, Croatia</i>)
	<i>Note: This session will present how States of different geographic regions address tools to foster MSME business through cooperation. It will highlight common approaches and divergences between existing regulated systems. The focus will be on the comparison of various types of inter-firm cooperation, their formation, organization and governance. Particular consideration will be given to solutions enabling the creation of models of inter-firm cooperation.</i>
	<p>* The Economic Interest Grouping (Prof. Vincent Malassigné, <i>University of Versailles Saint-Quentin-en-Yvelines (Paris-Saclay), France</i>)</p> <p>* Contractual joint ventures in China (Prof. Jingxia Shi, <i>China University of International Business and Economics, China</i>)</p> <p>* Facilitating MSMEs' growth through open and flexible organizational forms: Unincorporation in the USA (Mr. J. William Callison, <i>Lawyer, American Bar Association, USA</i>)</p> <p>* Relational contracts between Japanese manufacturers and their suppliers (Prof. Gen Goto, <i>University of Tokyo, Japan</i>)</p> <p>* Cooperatives in Africa: case study of the OHADA (Dr. Boubacar Diarra, <i>Director of Legal Affairs, Organization for the Harmonisation of Business Law in Africa (OHADA)</i>)</p>
12:15-13:00	Open Discussion
13:00-15:00	Lunch
15:00-16:15	4. Would MSMEs benefit from a uniform trade law instrument?
	Moderator: Prof. Maria Chiara Malaguti (<i>Catholic University of Sacred Heart, Italy</i>)
	<i>Note: Taking stock of the presentations and discussions of the two days, this session will examine whether States would benefit from a uniform instrument facilitating cooperation among MSMEs. The goal is to assist UNCITRAL in determining whether this could be an area of its future work.</i>
	<p>* Would a uniform trade law instrument promote contractual cooperation among multiple MSMEs and foster their business? If so, what would be an appropriate starting point for the work and what legal issues might be addressed?</p> <p>Roundtable with</p> <ul style="list-style-type: none"> - Ms. Jeannette Tramhel (rapporteur session 1) - Prof. Sheraldine Pinto, (rapporteur session 2) - Prof. Sinisa Petrovic (rapporteur session 3) - Prof. Dan Danielsen (<i>Northeastern University, United States</i>) <p>Other views from selected experts</p>
16:15 -16:30	Break
16:30-17:30	Open Discussion
17:30-18:00	Concluding remarks
	UNCITRAL Secretariat