

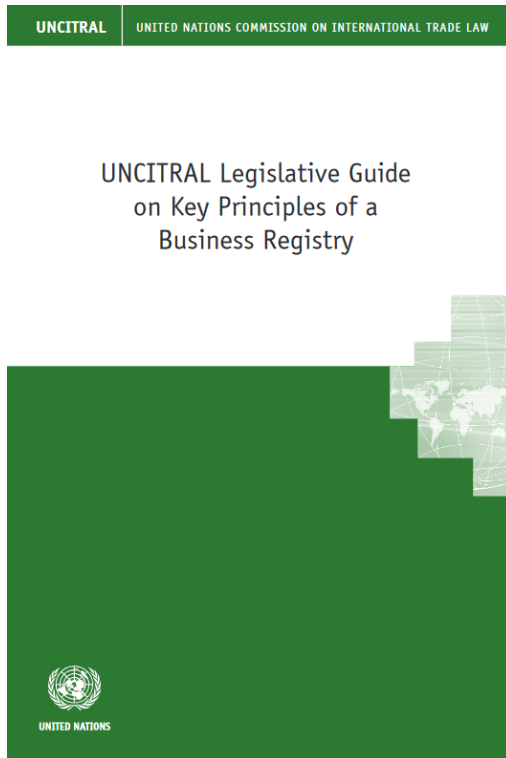


Webinar series on the Global Initiative on Unique Identifiers for Businesses

UNCITRAL Legislative Guide on Key Principles of a Business Registry (2018) – underlying issues informing the Guide

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The Legislative Guide on Key Principles of a Business Registry



- To create a sound business environment through businesses operating in the formal economy
- To facilitate efficient domestic business registration and cooperation among registries in different national jurisdictions to facilitate cross-border access to registries

Note: The guide recognizes that the operation of a business in the formal economy requires compliance with the requirements of the jurisdiction, which may not require registration with a business registry. The guide does not seek to create any obligation or implication on States to alter existing legislation or add additional requirements for registration

Legislative Guide – Key Features

Quality of the registry system

- ❖ Registry and information reliable
- ❖ Periodically updated
- ❖ Time & cost-efficient

- ❖ Public availability of information
- ❖ Facilitating access to information
- ❖ Cross-border access

Accessibility & information sharing

Efficient operation of the registry

Allow and improve interconnectivity between registries and other authorities

- ❖ Fully electronic registration
- ❖ One-stop shop
- ❖ Use of unique identifiers

- ❖ Minimum information required
- ❖ Use of standard registration forms
- ❖ MSME user-friendly updating of registered information

Simplified registration

- ❖ No discrimination to registration
- ❖ Permitting all businesses to register

Key Features

A guide suited to the needs of MSMEs

Accountability

ISSUE

Unclear or competing
authority
(national/local) over
the registry

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- The State operates the registry
- When an entity is appointed to operate the registry, the State maintains competence on the registry.

Accountability (ctd.)

ISSUE

Unclear and (at times) over discretionary powers of the registrar

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States should:

- Identify the entity authorized to appoint/dismiss and oversee the registrar.
- Determine the registrar's power & duties and their delegation.

Involvement of judiciary or notaries/lawyers

REGISTRATION AS A JUDICIAL PROCESS

It may result in longer and more expensive registration procedures. The same might happen with the mandatory use of intermediaries (e.g. notaries or lawyers).

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Leave this decision to States. The preparatory work notes that several countries have moved registration out of courts.

[Senegal & Honduras – reduced notary fees; Côte d'Ivoire eliminated the requirement to notarize company deeds]

Minimum capital requirement

ISSUE

- Paid-in capital to deposit in a bank/notary before registration and up to 3 months afterwards.
- Constraint for potential businesses: MSMEs unwilling/unable to commit.

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- Support the use of alternative means (conducting solvency tests on start-ups or preparing auditing reports).
- UNCITRAL Guide on LLE (2021): recommends abolishing minimum capital requirement.

[Philippines, Timor-Leste, Togo (reducing)]

Legal forms for small businesses

Rigid legal forms for businesses

- E.g. form requires publishing organizational rules
- Influence MSMEs' decisions to register

Legislative Guide

- Recommends adoption of simplified legal forms for businesses.
- Encourage freedom to change activity w/o reregistering

[Colombia, Chile, India – simplified incorporation]

Underlying laws

ISSUES

- Outdated laws on business registration.
- Cumbersome/outdated laws affecting registration.
- Too complex laws (e.g. company laws) for the country.
- Amending primary or secondary legislation?

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- Encourages inventory and analysis of all laws directly/indirectly relevant to business registration.
- Encourages reforms that are implementable.
- Recommends to consolidate in a clear manner all laws on business registration.
- Leaves it to States to decide when to reform primary or secondary laws

[Chile, improved clarity of the law; South Africa new company law simplified incorporation documents]

Improve efficiency of the registry staff

ISSUES

- Lack of skills
- Low motivation
- Poor services

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- Appropriate programmes should be established to develop staff skills:
 - To operate the registry
 - To improve the services offered

[Malaysia, Botswana, China – study visits to more advanced registries]



Thank you!

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