

From MSMEs to SMEs, UNCITRAL's Work on Limited Liability Organisations

Part of the mandate of UNCITRAL's Microfinance Working Group, over the last five years has been developing a cost effective and simplified legal framework for incorporation of micro, small and medium enterprises or (M)SMEs.

This free standing legislative framework has now been termed by UNCITRAL as a *United Nations Limited Liability Organisation*, which I will now refer to as an UNLLO.

If we consider the UN's 2020 Sustainable Development Goal *to alleviate poverty in all its forms everywhere* UNCITRAL's work on the UNLLOs has been an important inclusion to its mandates in facilitating and harmonising international trade law.

When referring to the Work of Working Group I on Micro finance, the UNCITRAL Secretariat has stated:.

In order to achieve the Millenium Development Goals, the global community must recognise the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment and UNCITRAL's contribution to the attainment of those goals through its efforts to modernise and harmonise international trade law.

The legal form of incorporation being developed by this Working Group is intended to be consistent with an adopting States' existing domestic legal

framework and is aimed at reducing legal obstacles and costs to incorporation into the formal marketplace.

It is unusual for UNCITRAL to create a mandate for a Working Group that deals with individual rights within a Nation-state. Historically UNCITRAL Working Groups have had a top down approach to developing international laws and standards which have required co-operation and adoption by States at an inter-governmental level.

The legislative guide for the UN Limited Liability Organisation does not have to be formally adopted by a State, rather it can be replicated through the harmonisation of existing domestic law. It is intended to guide developing nations toward a 'best practise', modern and adaptable approach to incorporation of Micro and Small business entities.

UNCITRAL's aim with the assistance of Member States and specialised observers, has been to provide a ready-made business form that can accommodate a very small single member entity to a more complex multi-member entity through its *'think small first'* approach.

This approach is intended to minimise the costs and legal complexity of incorporation and to encourage micro and small enterprises that may be trading in the informal market to be formed and recognised through formal registration.

The World Bank's International Finance Corporation and the Global Partnership for Financial Inclusion estimate that over 90% of (M)SME's in developing nations operate in the informal sector so the benefits of the legal frameworks that the UNLLOs provide is exponential.

An example of what can be achieved through a modernised legal framework for incorporation and registration of an MSME, can be reflected the changes made to Columbia's MSME legal framework in 2008.

The modernisation of their laws contributed to the regularisation of thousands of businesses who would previously remained in the informal marketplace. It measurably increased government revenues, created new job opportunities and enhanced access to credit and investment in the country. Within the first 5 years of enactment, over 200,000 simplified stock corporations were incorporated.

It is also clear that the benefit of UNLLOs can include a greater degree of protection of individual rights, including a delineation of business and personal assets and debts and greater protection of personal assets. It can also include enhanced access to credit, and eventually cheaper credit, and access more open market opportunities and contracts.

I thought I would finish with a quote from The Secretariat of UNCTAD in their support of the work UNCITRAL's working group which was:

Greater formalisation is essential to inclusive economic growth [for developing nations] and provides workers with greater dignity of lawfulness and enhanced access to social and financial services protections.

This Working Group is now moving toward reviewing the outcome of a colloquium which has proposed taking further steps in the facilitation, recognition and access to rights for UNLLOs. This will involve work on providing a framework for simplified contractual networks and other forms

of inter-firm co-operation with a view to simplifying the operation of trade for micro and small enterprises, I will be looking forward to the privilege to participate in that work with a view to potentially enhancing the legal rights around 1.6bn entities currently trading in the international informal economy.