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BPER 6th Workshop
Project Group Meeting
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Summary Report for the Sixth Meeting of the Best Practices in the Field of Electronic Registry Design and Operation Project

1.   The sixth meeting for the Project on Best Practices in the Field of Electronic Registry Design and Operation (BPER) was held on 12 September 2022 at the University of Cambridge and via Zoom. The BPER Project is run under the auspices of the Cape Town Convention Academic Project (CTCAP), which is a partnership between UNIDROIT and the University of Cambridge, with the Aviation Working Group as its founding sponsor. The BPER Project is supported by the UNIDROIT Foundation and Aviareto.

2.   The meeting was chaired by the Directors of the CTCAP, *Mr Ignacio Tirado* (UNIDROIT Secretary-General), *Ms Louise Gullifer* (Cambridge University) and *Mr Jeffrey Wool* (President of the UNIDROIT Foundation and Secretary-General of the Aviation Working Group). The meeting was opened with a welcome address by *Ms Gullifer.* The agenda for the meeting is provided under Annexe 1 of this Report.

3.   The sixth meeting sought to delve into issues related to business registries and the specific types of activities they undertook, as well as to take stock of international best practices that already existed in this area and examine how they could be highlighted in the future Guide on Best Practices for Electronic Business Registries. A preliminary outline of the principal issues confronting business registries and the factors governing best practices in this field had been prepared and circulated to all registered participants prior to the meeting. A total of 36 participants including registry experts, lawyers, and academics, from government agencies, leading international organisations, universities, and practitioners involved with electronic companies, attended the workshop. A full list of participants is available under Annexe 2 of this Report.

Purpose, scope and background of the Project

4.   Following the welcome address, *Ms Gullifer* explained that the purpose of the BPER Project was to develop a framework to identify best practice standards to manage and mitigate the risks for electronic registries. She noted that such a framework had been developed through the identification of 17 Critical Performance Factors (CPFs) and the elaboration of standards based on those CPFs. While the Project had until then focused on collateral registries, resulting in the production of the Guide on Best Practices for Electronic Collateral Registries, at its fifth Workshop it had moved to consider best practices for business registries. The sixth Workshop would build upon the conclusions of that meeting.

5.   *Mr Wool* recalled the points that had been agreed upon at the fifth meeting, which would serve as the starting point for the Workshop: Firstly, a variety of functions and forms of business registries existed around the world, which made it necessary to construe the concept broadly to encompass all of them. Second, the Project should only focus on electronic registries, as opposed to paper registries. Third, the legal problems underlying

electronic registries should remain outside of the scope of the Project. Fourth, none of the previously identified CPFs should be excluded, whereas new ones might be considered. Finally, a survey of professionals in the field could be conducted as a next step in the Project. He invited participants to focus the discussion on the core of the Project, which was to validate the approach that had been proposed in relation to electronic registries at large. Such a proposed approach had been tested with collateral registries as a first example, and business registries were now being used as a second example.

6.   He suggested devoting the first part of the meeting to confirming the applicability of the CPFs in the context of electronic business registries, while leaving out the practical and the legal aspects of running a business registry. Nevertheless, he noted that it would be necessary to make some legal assumptions for the purposes of applying the CPFs. These assumptions could be agreed upon during the second part of the meeting. He suggested that they could be extracted and developed from the UNCITRAL Legislative Guide on Key Principles of a Business Registry (UNCITRAL Legislative Guide), while making adjustments as necessary and avoiding overlaps with the CPFs. He proposed that the third part of the meeting be built upon these assumptions, to reflect on the application of each CPF to electronic business registries. The following step for the Project would be to conduct a survey of experts to collect feedback on the conclusions of this meeting.

7.   *Mr Hamza Hameed (Uɴɪᴅʀᴏɪᴛ Secretariat)* briefly explained the background of the BPER Project and highlighted the work that had been done thus far, particularly with regard to the Guide on Best Practices for Electronic Collateral Registries. This Guide featured 17 CPFs and examined their application to collateral registries. It also outlined some technical standards that registrars could consider when applying these CPFs to their operations. The Guide also contained several examples from the International Registry for Aircraft Objects. Following this, Mr Hameed summarised the 17 CPFs for the participants' reference.

8.   He noted that the fifth Workshop had shifted the focus of the Project to electronic business registries. The Workshop had included a presentation on business registries and extensive discussion on what should be covered and what should be excluded from a best practices guide. It had also reflected on the international instruments presently existing in this area, with a particular focus on the UNCITRAL Legislative Guide. He explained that following the fifth Workshop, the Project had engaged a Consultant, Mr Paul Farrell, to initiate work on a Guide on Best Practices for Electronic Business Registries. The document prepared by the Consultant had been shared with the participants prior to this meeting.

Presentation of the Outline of Business Registry Issues and Challenges
By Paul Farrell

9.   *Mr Paul Farrell* explained that the Outline he had prepared was the result of a preliminary effort to provide a definition of business registries, identify their functions, and draw a distinction between collateral registries and business registries. In so doing, he had drawn from an array of international documents that illustrated what electronic business registries were. These included: the Guide on Best Practices for Electronic Collateral Registries; the UNCITRAL Legislative Guide; the Report of the fifth Workshop of the BPER Project; the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the FATF Recommendations); the UK Corporate Transparency and Register Reform White Paper; and the FATF Mutual Evaluation Report on Germany's Anti-Money Laundering and Counter-Terrorist Financing Measures.

10.   After offering a definition of business registers and business registries, the document suggested that the purpose of business registries was to create transparency, legal certainty, and a single source of information for all businesses. It then contrasted business registries with collateral registries, noting that the essential difference between the two was the wider range of tasks in business registries. By way of illustration, in many jurisdictions, business registries contained a collateral registry, regarding securities on companies as a comparatively small component. This was followed by a remark on the importance of the legal context in which business registries were embedded. For instance, while the core task

of business registries in most countries was the creation of corporations, in some other countries (e.g., Luxembourg, the Netherlands and Italy) corporations were created by means of a notarial deed, and registration only had an evidentiary purpose.

11.   As to the scope of the prospective Guide, it was firstly suggested that it should be limited to the functions of business registries, even in those instances where business registries were a part of multi-functional organisations. For instance, the UK Companies' House had set up a Register of Overseas Entities that did not constitute a business registry and should therefore be excluded from the scope of the Project. Second, it should cover the enforcement processes related to the content of the registry. Third, it should consider all forms of business.

12.   It was purported that any discussion on business registries revolved around three pillars, each of which was essential for the registry's utility. The first was input. The core challenges of business registries in this regard concerned how to verify and improve the volume and timeliness of filings, and what were the enforcement powers attributed to registries in case of failure to file relevant data.

13.   The second pillar was the quality of the documents. This was the most complex to define because there were different understandings of it, depending on what criteria registries employed to evaluate their own performance, which were illustrated as follows: Firstly, data must be consistent within the registry and with other public services, such as the land registry or tax authority. Second, data must be previously verified either through a legal process or by expert examination. Third, the information must appear as correct against the users' knowledge from other sources. Fourth, the information must suit the requirements imposed on data users by national or international legislation and practice.

14.   It was noted that the legal effects of registration greatly impacted the quality of the filed data. Some of the issues that could impact the quality of registries were discussed: First, whether the fact that data supplied by a company was entered in the register gave it legal effect; second, whether a document was considered void if not registered; third, whether third parties could rely on registered information against the company. Furthermore, the importance of international connections in the context of data verification processes was mentioned. For instance, it had occurred that some companies were registered and operated in Germany as branches of UK companies which did not exist any longer, as they had been removed from the UK business registry for failure to file their returns. International connections should be enhanced to establish operational links for the purposes of data quality verification and to share best practices. Finally, dispute resolution was mentioned as an issue to be considered.

15.   The third and last pillar was output. It was noted that the Guide on Best Practices for Electronic Collateral Registries already addressed the problem of access to data by users. It was emphasised that rules on personal data protection raised new issues. For instance, in the UK they provided for data to be taken off the registry after a few years, which was in contrast with the purposes of a business registry.

16.   To conclude, *Mr Farrell* illustrated how the framework developed for the Guide on Best Practices for Collateral Registries could be incorporated into the abovementioned three pillars by allocating each CPF to either input, quality, or output. Access Control, Authentication, Integrity, Interoperability, Legal Authority of the Registrar, and Validation were categorised as quality issues. Accessibility, Availability, Confidentiality, Continuity, Disposition, Retention, and Timeliness concerned output. Legal Authority and Compliance, Trustworthiness, and User-Centred Design were classified as general topics that fit into all three pillars. This analysis shed light on a possible gap between collateral registries and business registries, concerning input. This could be explained by the fact that securities were only legally valid insofar as they were registered, thus creating a strong incentive for registration. Consequently, collateral registries did not need a major enforcement regime, while this was essential in the context of a business registry. In conclusion, it was proposed

that additional CPFs specific to business registries should be developed under the input pillar. An additional CPF concerning quality could follow from the international dimension of business registries.

Discussion of additional CPFs

17.   *Mr Wool* noted that Mr Farrell's presentation had confirmed that the discussion should focus on the question of what (if any) additional CPFs should be included in the prospective Guide. The first issue that needed to be addressed was whether the pillar input was already covered by the existing CPFs. He noted that Authenticity, Validity, and Trustworthiness might already cover that area. Further, Validation could apply to both input and output. The second issue raised by the presentation was whether the following principles should be considered for inclusion as additional CPFs: Consistency; Completeness; Justiciability (i.e., the property of being in form for dispute resolution); Processability (i.e., the property of being in a form that could be processed for follow-up purposes); Efficiency.

18.   *A participant* noted that the main difference between business registries and collateral registries was that business registries included a broad range of databases, and they seemed to be expanding in terms of use. Business registries could be thought of as a set of different registries. He suggested that it might be impossible to identify all the CPFs applicable to the variety of data included in business registries. A risk management approach might be the only way to deal with sets of data that were so diverse in their nature. He reflected on the successful experience of the International Registry of Mobile Assets, which had adopted a risk management approach by which every item was considered individually rather than applying a set of fixed rules. He recommended that an additional CPF should be the presence of a functioning, and possibly certified, risk management framework. *Mr Wool* commented that since the CPFs had been set up as a micro-risk management tool, the proposed factor seemed to encapsulate a meta-risk management principle.

19.   *A participant* noted that a standard should also be developed for a very practical issue of business registries, which was handling documents. Documents were usually scanned and reviewed by optical character recognition, but artificial intelligence was expected to be employed in the future to gain even more information from documents and groups of documents, and especially from pictures within documents.

20.   *A participant* proposed some other aspects that could be taken into consideration. The first was normalisation of data, a concept that went beyond controls over input as it involved restructuring the data within the registrations. The second aspect was signature of documents. In this regard, the existing CPF concerning validation could be augmented to include a reference to standards for electronic seals, qualified electronic signatures, and cryptographic QR codes.

21.   *Another participant* noted that the concept of validation involved an additional layer in the context of business registries, to the extent that it not only concerned reliability of documents, but also reliability of data. Seals and electronic signatures were only aimed at validating documents, which in turn needed to be processed, for instance, to allow data-based access (instead of document-based access) where different users were authorised depending on the data that they sought to access. It was pointed out that this could be considered as a separate factor.

22.   *A participant* commented that the Company Registration Office in Ireland mostly required users to fill in information directly into electronic fields, rather than sending in documents to be scanned. She noted that the electronic nature of registries had enabled the aggregation of data, thus opening up an array of possible uses of information. As a result, demand for information from public sector bodies and public policy makers had risen, and the registry had had to deal with an increasing variety of users with different demands and interests. She added that the Company Registration Office operated a series of registries

with different filing requirements depending on the kind of entity type, ranging in terms of breadth and depth from limited liability companies to sole traders.

23.   *Another participant* commented that, while there was high interest in information that business registries could collect, the question was to what extent business registries should collect information that, however useful, was not required to fulfil their obligations. Guidance on this point could be translated into an additional factor.

24.   *A participant* remarked that in Jersey almost all data was shared peer-to-peer, system-to-system, using Application Programming Interfaces (APIs), with no scanned documents involved. It was noted that this digital transformation had increased the amount of data requested by users, had speeded up transmissions and improved accuracy. FATF standards were concentrating on the digital aspects to improve transparency and adequacy of data, as well. It was anticipated that data in registries would be used, for instance, to recognise entities that were required to run a KYC process.

25.   *Mr Wool* commented that whether documents should be submitted and scanned, or information filled in into electronic fields, was a policy decision outside the scope of the Project. The fact that some legal systems still required the filing of documents should not be dismissed, since they might benefit from the development of best practices in this regard. He agreed with the point made in relation to the contrast between validation of information and validation of documents, while he noted that the type of information that should be gathered was again a policy question outside the scope of the Project.

26.   *A participant* suggested that one additional recommendation should be to broaden the scope of business registries to any legal entity operating in the market, whatever its legal form, to prevent entities that were registered in different registries, such as foundations, associations and cooperatives, from being directly or indirectly instrumentalised to circumvent anti-money laundering requirements. It was suggested that having a single registry encompassing every legal entity in each jurisdiction should be considered a best practice.

27.   *A participant* noted that the CPFs that related to the substantial truth of information were critical in the context of business registries and might require more attention. Unlike collateral registries, business registries conferred a status and created an identity for commercial entities. Interoperability could also be investigated further because of the potential for information in business registries to be used to validate other information. By way of example, land registries might use the information in the business registry to validate the existence of an entity before it could own land.

28.   *A participant* noted that completeness and adequacy should be understood as not only intra-system, but also inter-system standards. Because relevant data might be in a registry other than the business registry, completeness required achieving interoperability among all different registries in a jurisdiction, whereas adequacy meant that each registry should only collect the data most adequate for its purpose, to avoid any overlap or duplication of resources.

29.   *A participant* proposed three further issues for consideration. First, State bodies should set up a streamlined process to validate multi-jurisdictional data, some aspects of which were already built in in the private sector. Second, business registries should constantly innovate their systems and processes as new technologies evolved. Third, credibility of the source should be ensured either through a manual process, which however involved human error as a major issue, or through automated multi-validation processes.

30.   *A participant* added that in the EU legislation concerning the cross-border transfer of a company's seat, the principle of cooperation between the different authorities in charge of business registries was deemed necessary to facilitate operations, showing that international

cooperation and harmonisation of different registries was critical for the purposes of a modern, efficient registry.

31.   *Mr Tirado* noted that some of the views expressed seemed to have a regulatory and public law connotation, as they dealt with issues such as money laundering or tax evasion. He invited participants to focus on the private law aspects of business registries, including their material content and their interoperability with other registries such as land and collateral registries.

32.   *Ms Gullifer* pointed out that the core functions of business registries should be taken as a given, and the focus should be on identifying best practices to perform those functions in an electronic space.

33.   *Four points of agreement emerged from the discussion. First, it was necessary to reassess the input pillar to verify whether the existing CPFs were sufficiently nuanced to capture the notion of substantive truth, whether of the document or of the information. Second, an additional factor should encapsulate the concept of consistency or normalisation of the data, which was connected and almost a predicate to interoperability. Third, another additional factor should be completeness or adequacy, meaning that data should be complete or adequate for whatever function was attributed to the business registry in a given jurisdiction. Fourth, validation should be re-defined to consider the increasing concern over interoperability, consistency and cross-border verification in the international context. Futureproofing or innovation was a fifth aspect worthy of discussion. Finally, a discussion was invited on whether additional factors should concern the possibility to correct or rectify data, the efficient use of resources, and the filing of information in a form that made a process for the determination of legal rights possible.*

Discussion of additional CPFs related to the truth of information in business registries

34.   *Mr Farrell* noted that there were some layers between substantive truth and what was legally presumed to be true. For instance, the Irish business registry did not rectify wrong calculations in accounts that had been prepared in compliance with the applicable law's requirements. In the same fashion, in Ireland and in the UK, notices had to be delivered to the registered office of a company even if that address was not empirically correct.

35.   *A participant* commented that the Irish registry operated as a "good faith" registry, meaning that it assumed that the registered information was correct unless it was obviously not, while the responsibility for the correctness of the information was on the person or entity who presented it. It was pointed out that registries might not have the resources to verify the truthfulness of every piece of information.

36.   *A participant* noted that the key element in this regard was the extent to which a third party consulting the registry could rely on that information for legal purposes, regardless of its factual accuracy.

37.   *A participant* commented that one could only rely on a registry as a source of truth to a certain extent. The role of the registrar of a business registry was different from the custodian role played by the registrar of a collateral registry. While the latter was a database keeper with responsibility for the soundness of the information on the collateral registry, the former had to some extent an authority to confirm and endorse the information that was on the business registry. If the law identified the registry as the source of truth of the existence of the corporate entity and the ability of third parties to deal with it, the registrar should ensure the truthfulness of the information and should have characteristics that prioritise this function.

38.   *Another participant* noted that the "good faith" approach was not the only one possible. An alternative system was to establish preliminary verifications that entailed high quality of information and a legal presumption of its validity. For instance, the Spanish business registry had implemented automatic arithmetical controls of the quality of

information in the financial accounts of companies. Both systems were equally valid, and the choice depended on tradition and the institutional design of the registry (e.g., the Spanish business registry put the emphasis on avoiding ex-post litigation, hence it implemented strict ex-ante controls). If providing high quality of information was defined in the institutional design as the purpose of the registry, it would be necessary to strike a balance between screening and responsibility for the quality of the documents. In conclusion, the future instrument should contemplate the existence of different institutional designs.

39.   *A participant* suggested that to take into account the divide between registries operating on a good faith basis and registries that checked data, it might be sufficient to require transparency on what kind of controls were implemented by the registry.

40.   *A participant* distinguished two different issues. One concerned the liability of the registrar in the ex-ante verification of information, which might depend on the legal framework. The second concerned whether the registrar had a duty to act in case it received a notice of the incorrectness or illegality of a registration, and if so, according to what procedure. The latter might be connected to the former issue, insofar as the less verification was conducted ex ante, the more ex-post correction obligations a registrar might have.

41.   *Mr Tirado* noted that there was a traditional distinction, based on the legal effect of registered information, between notice-based systems and systems where all information was screened by a gatekeeper and was therefore endowed with a presumption of validity. While the notice-based system had been assumed to be best practice for secured transactions, he queried whether business registries might require some gatekeeping activity.

42.   *Mr Wool* noted that because of the variety between and even within different registries, the factor concerning truth or accuracy came down to whether a registry was fit for purpose, regardless of what such purpose was. He further commented on the proposed factor concerning transparency, noting that it might risk overlapping with domestic legal requirements.

43.   *Mr Farrell* warned of the risk of the concept of fit-for-purpose becoming circular, since the purposes of a business registry were generally not set out by the law but were rather defined by what the registry guaranteed. To avoid this problem, the Outline envisaged three general purposes (transparency, legal certainty, and single point of contact) that applied irrespective of the jurisdiction. He added that the spectrum of possible approaches of registries was wider than it appeared from the contrast between good faith registries and registries that checked information. He finally recalled that there were two different understandings of truth, one stemming for instance from verification by a notary, and the other being empirical truth.

44.   *A participant* pointed out that in the Guide on Collateral Registries this discussion had been included in the commentary on the legal environment. She suggested that the same approach could be taken for business registries, while adjusting the commentary to cater for the greater number of existing models. It was queried whether best practices could be set forth at all in relation to this issue, given how heavily it relied on the different legal environments. She proposed that a best practice might be to intensify ex-post correction procedures depending on the level of ex-ante verification required by the legal framework.

45.   It was agreed that the fit-for-purpose standard should not go into the substance of the business registry functions envisaged in different jurisdictions but should rather be limited to assessing that the necessary electronic systems were in place to achieve such functions, whatever they might be. A concern was raised that the differences in functions might be so great, that there might be different technical standards that needed to be met.

46.   *A participant* further illustrated the idea of fit-for-purpose through the example of two possible functions of business registries. Whereas one could rely on the information

concerning the appointment of directors to verify if a person had the right to act on behalf of the company, banks would not rely on the information in the registry to assess the creditworthiness of a company. In the latter case, the registry only verified that the financial accounts were audited according to the law. Even if the information provided was reliable, the function of the registry was completely different.

47.   *A participant* noted that the concept of fit-for-purpose might already be covered by the CPF about Legal Authority and Compliance, also considering that any type of registry must be fit for purpose. She suggested that the existing CPFs might be relevant and applicable to a broad range of registries, and it might be sufficient to adapt the emphasis and the application to the context of each registry.

48.   *Another participant* added that, although the reliability of some information in the registry, such as the appointment of directors, varied from jurisdiction to jurisdiction, all business registries were the authoritative source of information for the status of an entity, regardless of the legal system.

49.   *A participant* noted that business registries were a blend of status-conferring and notice elements, like land registries. Besides the fundamental role of conferring status of corporate existence (or confirming it in jurisdictions where companies were created by notaries), registration of information about the company itself might be more of a notice-based function.

50.   Another potential truth-related CPF concerned the possibility to correct or rectify data. *A participant* noted that such a CPF would involve three issues. A technological issue was the extent to which a registry could implement a blockchain mechanism, which might be difficult to rectify if needed. A procedural issue concerned identifying who was responsible for rectifying information. A third issue concerned the legal effects of corrections on previous transactions. *Another participant* suggested that the need for data to be rectifiable might fall under the concept of Integrity, which guaranteed that data was consistent and was only modified by those who had authorised access.

51.   *It was agreed that it was not possible to overcome differences between systems, and discussions should be limited to identifying the requirements to achieve the different purposes and functions of business registries in an electronic form.*

Discussion of normalisation or standardisation as an additional CPF

52.   *Mr Wool* invited the experts to discuss whether there was any reason to exclude a CPF called consistency or normalisation of either documentary information or data, including for purposes of interoperability.

53.   *A participant* noted that the normalisation of data was a foundational issue in business registry design, because many things could only be done if the data in the registry was normalised. This also held true from the perspective of a collateral registry. For instance, there must be a mechanism in place to make sure that secured parties are pre-registered in the system before their security rights can be registered.

54.   *Mr Farrell* referred to point 3.1 of the Outline, where it was stated that data should most importantly be consistent within the register, across each entity and related entities; in the second place, it should be consistent between public services (for example, land registers or tax authorities); and lastly across international borders, such that if in State A, a company was described on the register as related to a company in State B, the register in State B showed matching information.

55.   *A participant* noted that normalisation was a technical database function. The decision whether to normalise data was a technical design decision. In the past, efficiency was considered the trade-off of normalisation, whereas the latest trend was towards

normalising data to the extent possible. He questioned whether it should be seen as a CPF, considering that in that case one could include many other database and infrastructural architectural issues that were relevant to database architects.

56.   It was argued that normalisation might be the wrong term, because even registries that were fully normalised at a technical level might contain some information that was not normalised (for instance, the director's registry). There were different levels of normalisation that could be achieved by different databases. Standardisation and uniqueness were proposed as alternative terms. It was clarified that this should be distinguished from the existing CPF on Accessibility, since being able to obtain access to a resource was a different concept that did not extend to being able to understand the resource and compare it to other information.

57.   *A participant* highlighted the importance of standardisation, mentioning an example of a beneficial owners registry that allowed users to indicate their nationality in free text fields and ended up with many different ways of saying that an entity was, e.g., British. This could be solved by preparing a drop-down list where users had to select a pre-defined option.

58.   *A participant* suggested that the word transparency could be used in relation to the need to identify the uniqueness of the user, to facilitate that the user was identifiable in multiple records and avoid fraud. *Another participant* suggested expanding the CPFs on Authentication and Access Control to include not only authenticating someone to make a registration in relation to a collateral, but also authenticating that this person was, for instance, the director of different companies and therefore had various registrations.

59.   *It was agreed that the main challenge would be how to measure this factor, and that a prospective guide should not go beyond suggesting normalising and standardising data insofar as it was possible and appropriate.*

Summary of additional CPFs discussed

60.   *A participant* noted that the Guide on Collateral Registries was flexible and wondered whether the suggestions that had been made for additional factors might fit either in the definition or the description of existing CPFs. The question was therefore whether the Project should adapt the existing set of CPFs to the specific needs of business registries, or whether new CPFs should be added. *Another participant* agreed that all the existing CPFs should be reviewed to assess if they could apply to business registries, even with some amendments, and new CPFs should only be added where necessary.

61.   *Mr Wool* agreed with the suggested way forward. He recalled seven potential additional CPFs that had been mentioned. First, the concept of truth or factual accuracy of the data. Since this was not covered by any existing CPFs, a new CPF seemed necessary. Second, correctability, which did not seem to be covered by existing CPFs either. Third, the concept of consistency, normalisation or standardisation. He queried whether this was covered in existing CPFs and whether it needed to be covered in the first place. Fourth, efficiency. He queried whether this was covered by the existing CPFs on User-Centred Design and/or Timeliness, or whether it should be a standalone factor. Risk management and innovation were the fifth and sixth potentially new factors, whereas the concept of completeness or adequacy fell into factual accuracy. The seventh potential additional factor concerned data being in form for judicial process, e.g., for evidentiary purposes if a dispute arose. The analysis should focus on whether these factors were already covered, and if not, whether they should be covered, or whether they should have been covered before because they were also relevant to collateral registries.

62.   In the ensuing discussion, it was acknowledged that the most important missing factor was factual truth, meaning whether steps have been taken such that the document or information is fit for its regulatory purpose, either to be relied upon by third parties or be used by government officials.

63.   *Ms Gullifer* queried whether the issue was whether the registry was fit for its regulatory purpose or whether it complied with the legal rules, the difference being that the rules were not debatable, while the purpose of those rules might be to some extent. While it fall under the same umbrella concept as the Legal Authority and Compliance CPF, it was a different point insofar as it did not concern the operations of the business registry, but rather the actual data. One way of including it was to elaborate in the text under the same CPF.

64.   *A participant* pointed out that the issue might be the authenticity of the registry's output, rather than what the registry received. It was not possible for the registrar to validate or verify everything that was filed. To the extent that the registrar relied upon the information that came in and endorsed it to confer the status of corporate entity, the factual truth of the output might be the most important element.

65.   *Mr Wool* noted that the meaning of the existing CPFs was not univocal. For instance, Validation, Legal Authority and Compliance, and Trustworthiness were very general and could be broadly interpreted to encompass the concept of factual truth.

66.   It was agreed that truth-related issues concerned on the one hand the accuracy and verification of filed documents and information, and their ex-post correctability or rectifiability on the other. These issues deserved a more in-depth analysis in the context of business registries than they did in the context of collateral registries, and might be covered by two new CPFs.

67.   The participants expressed different views on the proposed third additional CPF on consistency, normalisation or standardisation. Some questioned whether it was relevant, and whether it should be an additional CPF.

68.   With regard to the proposed fourth new CPF on efficiency, it was discussed that it had two meanings. While the first meaning overlapped with the existing CPF on Timeliness, there might also be a more general meaning that the system must be designed to perform its functions as well as possible, given the limited resources and ever-increasing tasks. It was pointed out that this second aspect might already be covered by the concept of risk management. It was therefore agreed not to add efficiency as a distinct new CPF.

69.   The fourth additional CPF would then be risk management, and the fifth would be innovation, especially in technology. Finally, there seemed to be agreement that the sixth new CPF should focus on guaranteeing that the information in the system was in a form that could be used including as evidence to deal with disputes. The term justiciability would be used for this additional CPF for the moment.

70.   A final point that had been mentioned was the issue of electronic systems that had not yet been digitised, and relied on scanned documents to become electronic. *Mr Wool* queried whether moving as quickly as possible towards being fully digitised should be considered a best practice. *A participant* clarified that the difference between scanned documents and digital data was the extent to which optical recognition was possible and therefore whether the data in the document could be automatically processed. It was pointed out that having a scanned document that was a unit stored in a server might have very limited value. It was agreed that migrating to an entirely electronic based system should be included as a new CPF called electronification and should be defined so as to include digitalisation, as well.

71.   *It was summarised that the seven additional factors described above should be developed, while the existing CPFs should be adapted to the context of business registries.*

Discussion of technical standards

72.   It was noted that differences between business registries and collateral registries should be discussed with specific reference to any technical standards that did not apply to

collateral registries but might apply to business registries. It was acknowledged that the content of the business registry might influence the registry's technology and activity, so a list of the core content that could be assumed while assessing the CPFs should be drawn up. It was further noted that one of the main challenges would be to draft general guidance on technical issues that could be useful in many jurisdictions, since the content of registries varied so greatly.

73.   *A participant* noted that there was not much difference between business registries and collateral registries from a technical perspective. Rather, the question was whether the CPFs might be too narrow and needed to be expanded for business registries. *Ms Gullifer* agreed that the Project should not be limited to adding new CPFs, but it should also consider how existing CPFs applied in the context of business registries.

74.   *Another participant* added that two beneficial aspects of the existing CPFs were their general nature, which made them fit for different applications, and their technology neutrality, which made them future proof.

75.   *It was agreed that the ISO standards mentioned in the Guide on Collateral Registries provided a good framework and should be referred to in the future Guide on Business Registries, although there were some different or additional standards applicable to specific issues or in certain regions.*

Discussion of the contents and purposes of business registries

76.   *Mr Wool* invited participants to list the contents of business registries to which the identified standards would be applied. *Several participants* noted that this may include, depending on the legal requirements in different jurisdictions: the business type, name and address, the constitutive document(s), the powers of attorney, the shareholders and beneficial owners, the financial accounts and annual returns, as well as any modifications to any of the above. It was agreed that the most useful way to organise such a list was based on the life cycle of a business, including information that related to the establishment of a company, its natural life, its termination, and any changes in between.

77.   *Mr Tirado* pointed out that, since one of the functions of registries was to lower transaction costs by providing legal certainty, a best practice might be to create a one-stop-shop (or single point of entry) for users to access all relevant information to make adequate investment decisions, including direct links to information filed in other registries, such as the company's assets and how they were encumbered, or the company's registered trademarks. He noted that this was related to the Interoperability CPF and that it would provide an alternative to the case-by-case due diligence model. *A participant* agreed that one of the functions of business registries was to reduce the costs of due diligence procedures by providing high-quality information.

78.   *Mr Farrell* advised against using the term single point of contact because it was generally used in a very specific context. While connections between registries should be established to avoid requiring users to file the same information with different institutions, this could be encompassed by the more general concept that a registry ought to be efficient, effective and speedy.

79.   *Mr Wool* pointed out that, before moving forward, it was necessary to identify the functions of business registries against which the CPFs would be assessed. These might include providing businesses with status and capacity of transacting, as well as providing information for taxing, access to credit, monitoring and other purposes. *Mr Farrell* recalled that he had identified three core functions of business registries: transparency, legal certainty, single source of information.

80.   It was agreed that since the functions of business registries varied greatly across jurisdictions, it would be necessary to assume some core purposes, while at the same time

taking this variety into account by making standards contingent on what different laws required.

81.   *A participant* noted that alongside core functions, other functions might evolve naturally over time. He proposed that the prospective guide could include some basic guidance for those, such as using risk assessment or ISO 9001, but it should exclude non-core functions from the CPF analysis. *Ms Gullifer* pointed out that the Guide on Collateral Registries had dealt with this issue by focusing on the technical standards and providing some examples.

82.   *It was noted that the standards should not be framed as recommendations for what the law should require, but rather as best practices for business registries regardless of the legal requirements they were subject to.*

<div align="center">***</div>

83.   *The CTCAP Directors thanked all the participants for their valuable input and closed the meeting.*

ANNEX 1

Agenda

An initiative under the auspices of the Town Convention Academic Project

BPER PROJECT
Best Practices in the Field of
Electronic Registry Design and Operation

Project Leads:

UNIDROIT

UNIVERSITY OF
CAMBRIDGE
Faculty of Law

Founding Sponsor:

A·W·G
AVIATION WORKING GROUP

Supported by:

aviareto

4 August 2022

6th Workshop on Best Practices in the

Field of Electronic Registry Design and Operation

Draft Agenda

Monday, 12 September 2022

University of Cambridge, Cavonius Centre, Gonville & Caius College, West Road site, Cambridge CB3 9DS and Via Zoom

Workshop Chairs: Professor Louise Gullifer, Professor Jeffrey Wool, Professor Ignacio Tirado

(all times are in British Summer Time (BST), UTC +1)

10:00 – 10:30	Delegate registration and lunch/tea/coffee Opportunity for virtual participants to check connection
10:30 – 11.00	Welcome Remarks CTCAP Directors
11:00 – 11:10	Summary of Intersessional Work *UNIDROIT Secretariat*
11:10 – 11:30	Introdcution to the Draft Guide on Best Practices for Business Registries *Paul Farell*
11:30 – 11:45	Coffee break
11:45 – 13:00	First Open Discussion: Questions of scope, differences between business registires and collateral registires, and the structure of the guide on business registries
13:00 – 14:15	Lunch
14:15 – 15:45	Second Open Discussion: Criticial Perfomance Factors for business registires, input from international organisations and practicioners, comparisons and benchmarking the guide with other international instruments in this area
15:45 – 16:00	Coffee break
16:00 – 17:30	Next steps and Closing Remarks

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PROJECT LEADS

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CAMBRIDGE
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Facilitating the study of the Convention on International Interests in Mobile Equipment

List of registered participants

1. Alexis Lupo (IACA)
2. Amelia Lo (UNIDROIT)
3. Anna Veneziano (UNIDROIT)
4. Caroline O'Brien (Aviareto)
5. Diana Brookes (ICAO)
6. Gary Walsh (Enterprise Registry Solutions)
7. Gary Sin (Paradigm Applications)
8. Hamza Hameed (UNIDROIT)
9. Hayley Clarke (Service Nova Scotia and Internal Services)
10. Hessam Oddin Rahimi (Independent Researcher)
11. Ignacio Tirado (UNIDROIT)
12. Isabelle Rueda (University of Exeter)
13. Jeffrey Wool (Aviation Working Group / UNIDROIT Foundation)
14. Jilian Wang (CAST)
15. Jingxia Shi (School of Law, Renmin University of China)
16. John Kimbler (Paradigm Applications)
17. José Manuel Canelas Schüt (Legal Bolivia / University of Oxford)
18. Julian Lamb (Jersey Financial Services Commission)
19. Kathy Hilman-Weir (Information Services Corporation)
20. Laurel Garven (Information Services Corporation)
21. Louise Gullifer (University of Cambridge)
22. Luis Fernandez (Registradores de España)
23. Luís Lahoz (Colegio de Registradores)
24. Marla Weinstein (ICAO)
25. Maureen O'Sullivan (Companies Registration Office)
26. Megumi Hara (Chuo University)
27. Monica Canafoglia (UNCITRAL)
28. Myrte Meijer Timmerman Thijssen (UNIDROIT)
29. Niall Shanley (Green Impact Future Technology)
30. Paul Farrell (PJMF Services)
31. Rebekka Forster (UNIDROIT)
32. Rob Cowan (Aviareto Limited – International Registry)
33. Siew Huay Tan (Civil Aviation Authority of Singapore)
34. Souichirou Kozuka (Gakushuin University)
35. Teresa Rodríguez de Las Heras Ballell (Universidad Carlos III de Madrid)
36. William Brydie-Watson (UNIDROIT)