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Work Programme

Warehouse receipts

Note by the Secretariat

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I. Introduction

1. At its forty-ninth session, in 2016, the Commission decided to place the topic of warehouse receipt financing on its future work programme and agreed that it should be considered further after a colloquium or an expert group meeting.¹ Accordingly, the Secretariat organized the Fourth International Colloquium on Secured Transactions (the “Colloquium”, Vienna, 15–17 March 2017) to obtain the views and advice of experts with regard to possible future work on security interests and related topics, which included the topic of warehouse receipts.²

2. At its fiftieth session, in 2017, the Commission took note of the deliberations and conclusions of the Colloquium and decided that priority should be given to the preparation of a practice guide on secured transactions.³ With respect to the topic of warehouse receipts, the Commission decided to retain the topic on the future work agenda for further consideration.⁴ The Commission was further informed that a delegation would prepare and submit a study on warehouse receipts for that purpose.

3. During the thirty-third session of Working Group VI (Security Interests) (New York, 30 April–4 May 2018), it was proposed that work should be undertaken to prepare a substantive text on warehouse receipts and after discussion, the Working Group agreed to recommend to the Commission that it be mandated to undertake work on the topic.⁵

4. At its fifty-first session, in 2018, the Commission took note of the proposal by Working Group VI on possible future work on warehouse receipts, which would aim at developing a modern and predictable legal regime. In support of that proposal, the importance of warehouse receipts to agriculture and food security as well as their use in supply and value chains, was highlighted.⁶ At that session, the Commission also heard that the Organization of American States (OAS) was in the process of updating its 2016 report on principles for electronic warehouse receipts for agricultural products in light of recent developments.⁷ After consideration, the Commission concluded that more preparatory work on the topic of warehouse receipts was needed before it could decide on future steps and thus decided to request the Secretariat to conduct exploratory and preparatory work on warehouse receipts so as to refer that work to a working group.⁸

5. At its fifty-second session, the Commission took note with appreciation of a note by the Secretariat ([A/CN.9/992](#)) providing an overview of a study presented to the Secretariat by the Kozolchyk National Law Center (NatLaw)⁹ on possible future work on warehouse receipts. The study had examined the legislative and regulatory frameworks governing warehouse receipts in several States, illustrating a wide range of different approaches to warehouse receipts. While divergence of approaches to, and legal treatment of, warehouse receipts was not in and of itself a problem, the study suggested that a certain level of harmonization could facilitate the use of warehouse receipts, in particular across sectors and in the cross-border context. The study also pointed out that several States, in particular those with a common law tradition, did

¹ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 125.

² The deliberations and conclusions of the Colloquium are summarized in documents [A/CN.9/913](#) and [A/CN.9/924](#).

³ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 227.

⁴ *Ibid.*, paras. 225 and 229.

⁵ [A/CN.9/938](#), paras. 92 and 93. The proposal is set out in the annex to the report of the Working Group.

⁶ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 249.

⁷ *Ibid.*, para. 182.

⁸ *Ibid.*, para. 253(a).

⁹ NatLaw is a non-profit research and educational institution affiliated with the James E. Rogers College of Law at the University of Arizona in Tucson, Arizona.

not yet have a legislative or regulatory framework on warehouse receipts, whereas in other States, the framework had only been developed partially, thus requiring a more comprehensive solution to facilitate the use of warehouse receipts. The study suggested that the Commission should consider developing a model law on warehouse receipts in consultation with international and regional organizations that have already undertaken work in that field.

6. The Commission noted the practical relevance of the project, given the importance of warehouse receipts to agriculture and food security, and their use in supply and value chains.¹⁰ The Commission confirmed its earlier decision to include the topic in its work programme but agreed that it still needed to consider several important elements before embarking on the development of an international legal instrument on warehouse receipts, such as: how such work should be undertaken (whether by a working group or the Secretariat with the assistance of experts); the scope of such work (for example, whether to address all substantive legal aspects of warehouse receipts, whether to focus on their use for financing purposes or on their cross-border use and whether to cover their use more generally or in a specific sector); whether the work should focus on dematerialized forms of warehouse receipts and the legal nature of such warehouse receipts in the digital economy and their use; the form of such work (a convention, a model law or a guidance text). The Secretariat was requested to examine the relationship of the topic with existing UNCITRAL texts, mainly the Model Law on Secured Transactions and the Model Law on Electronic Transferable Records.¹¹

7. There was general agreement that the work should be comprehensive, as suggested in the study, and not only limited to the use of warehouse receipts as collateral in secured transactions. While there was a preference for referring the work to the first available working group, the Commission reserved its position as to whether the project could be integrated into the longer-term work programme of any existing working groups. The Commission agreed to request the Secretariat to proceed with its preparatory work and to convene a colloquium with other organizations having relevant expertise, with a view to considering the questions of scope and nature of the work discussed at that session and possibly advancing the preparation of initial draft materials.¹²

8. At the fifty-third session, the Commission had before it a note in which the secretariat presented the progress made since the fifty-second session of the Commission (A/CN.9/1014). The Commission was informed that its secretariat had invited Unidroit to participate in and contribute to the preparatory phase of the Commission's work in the area of warehouse receipts. The Commission was informed that, in line with the mandate received from the Commission at its fifty-second session (see para. 7 above), and in order to discuss the proposal to conduct legislative work on warehouse receipts, Unidroit and the UNCITRAL secretariat had jointly organized and held a workshop with a broad audience of experts and organizations on 26 March 2020¹³ (due to the measures put in place by States and the United Nations in response to the COVID-19 pandemic, the workshop eventually took place in the form of a webinar by videoconference). The Commission was further informed of the outcome of the webinar and the recommendations made by the participants, as well as the assessment made by the secretariat concerning scope and methodology for the work by the two organizations.

9. The Commission concurred with the assessment made by the secretariat set out above and requested the secretariat to proceed with the necessary preparatory work towards the development of a model law on the private law aspects of warehouse

¹⁰ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 195.

¹¹ United Nations publication, Sales No. E.17.V.5.

¹² *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 196 and 221(b).

¹³ The programme is available at www.unidroit.org/english/news/2020/200326-warehouse-receipts/programme-e.pdf.

receipts, covering both electronic and paper, negotiable and non-negotiable receipts. The Commission agreed to authorize such work to start on a broad basis aiming at the preparation of a comprehensive instrument covering all the essential aspects necessary to regulate the private law side of a system of warehouse receipts, including, inter alia, (a) a set of definitions of the main concepts, (b) form and content requirements for the receipts, (c) the rights and obligations of the parties concerned, (d) the negotiability and the means of transfer of the documents, (e) the substitution and removal of goods from the warehouse, and the termination of storage, and (f) aspects concerning the creation and third-party effectiveness of a security right in warehouse receipts (and stored goods), as well as relevant priority and enforcement-related issues. The Commission endorsed the expert's recommendation that a text on warehouse receipts should contemplate the issuance and negotiation of electronic warehouse receipts, including through electronic platforms, distributed ledger technology systems, in the form of tokenized or digital assets, or other technological mechanisms, also taking into account possible future work by UNCITRAL on legal aspects of the digital economy, including issues related to distributed ledger technology and electronic trading platforms (see [A/CN.9/1012](#), [A/CN.9/1012/Add.1](#), [A/CN.9/1012/Add.2](#) and [A/CN.9/1012/Add.3](#)).¹⁴

10. As regards the methodology, and bearing in mind the overall work programme of the Commission and the expected progress of the projects currently being dealt with by the various working groups, the Commission agreed to carry out the project jointly with Unidroit, and noted with appreciation the information that the Governing Council of Unidroit had already authorized its secretariat to participate in such a joint project. The Commission also agreed with the proposal by the secretariat that Unidroit could convene a study group or working group set up by Unidroit under the auspices of its Governing Council and to which the UNCITRAL secretariat would be invited in order to start the work. Once the Unidroit study group or working group had completed its work, the preliminary draft model law would be submitted for intergovernmental negotiations through an UNCITRAL working group, possibly by the second half of 2022, with a view to its ultimate adoption by UNCITRAL. The Commission further agreed that the final text to be adopted by UNCITRAL would bear the names of both organizations, in recognition of their close cooperation and the contribution by Unidroit during the preparatory phase of the project. In conclusion, the Commission requested its secretariat to proceed with the preparatory work in cooperation with Unidroit towards the development of a model law on the private law aspects of warehouse receipts, as proposed in paragraphs 24–26 of the note by the Secretariat ([A/CN.9/1014](#)) and present the results of that work to the Commission for consideration at its next session.¹⁵

II. Preparatory work carried out by Unidroit and the Secretariat

11. The first session of the Working Group on a Model Law on Warehouse Receipts convened by Unidroit in consultation with the UNCITRAL secretariat (hereafter the “Working Group”) took place via videoconference on 2 to 4 December 2020. The session was attended by 30 participants, comprised of 9 Working Group members; 17 observers including representatives of international and regional organisations as well as the private and public sector; and 4 members of the Unidroit Secretariat.¹⁶

12. The Working Group discussed the scope and content of a possible model law. The Working Group agreed that a possible model law should focus on the warehouse

¹⁴ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, para. 60.

¹⁵ *Ibid.*, para. 61.

¹⁶ The report of the first session, including the list of participants (Annexe I), is available in the page of the working group at the Unidroit website (<https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>).

receipt as such and should deal with the rights and obligations of the parties to the underlying contract of deposit only to the extent necessary to support the financing function of the warehouse receipt. The Working Group also agreed that a possible model law should cover both transferable and non-transferable warehouse receipts, while the Group would further consider whether the term “transferability” or “negotiability” should be used in this respect. The Working Group agreed that it needed to consider further whether to use the single warehouse receipt as the preferred option, and that it should examine the functional reasons for the use, in numerous countries, of the so-called “dual system”, where the warehouse issues a warehouse receipt (also known in some jurisdictions as a “certificate of deposit”) and a pledge bond (also known in some jurisdictions as a “warrant”).

13. The Working Group discussed the question of the minimum content required for a document to qualify as a warehouse receipt under a possible model law. The Group agreed that it needed to consider the consequences of missing information, as well as whether a possible model law should include presumptions to fill gaps in receipts, and whether it should determine the effects vis-à-vis third parties if information was omitted or inaccurate. The Working Group also agreed that the standards on functional equivalence, non-discrimination and technology neutrality set forth in the UNCITRAL Model Law on Electronic Transferable Records (MLETR)¹⁷ should serve as a basis for a possible model law but did not need to be replicated in its text. The Group would consider whether more concrete provisions on the control of an electronic warehouse receipt were needed for the specific context of warehouse receipts.

14. The Working Group agreed that a possible model law should not require purchasers of paper negotiable receipts to notify the warehouse operator and receive confirmation in order to have priority rights against competing claimants. The Group further agreed that notification should also not be required for the perfection of the transfer of a paper negotiable receipt. The Working Group agreed that a possible model law would require an “acknowledgment” rather than an “acceptance” by the warehouse. The Group would further consider whether to provide forms for the following: the assignment of a non-negotiable warehouse receipt; a notification to the warehouse operator of the assignment; and an acknowledgment by the warehouse operator of that notification. If the Group decided to provide for such forms, those should not be included in the model law itself, but rather in a guide accompanying the model law.

15. The Working Group agreed that it was necessary to deal with the protection of the holder of the receipt (“negotiability”) in a possible model law. The Chair noted that the Group needed to give further consideration to the issue of negotiability and its features as well as the existing doctrines in continental legal systems.

16. The Working Group noted that further discussion was required regarding the functions that the registry should perform. The Working Group agreed that the issues regarding the need for, and desirability of, rules enabling transactions with electronic warehouse receipts (EWRs) on platforms should be further explored. The Working Group agreed that the registry should restrict the access to information. The Group agreed to examine in more detail what would be included in the black-letter rules of a possible model law with regard to the availability of information. The Working Group noted that it would examine in more detail what should be included in a possible model law with regard to capturing information in an EWR. With regard to the discussion on registration more broadly, the Working Group agreed that it was important to ensure both flexibility and practicability of a possible model law, and to design it sufficiently broad to accommodate any future technological developments. The Working Group agreed to defer the question of whether to follow the approach of the UNCITRAL Model Law on Secured Transactions (MLST)¹⁸, namely, to leave it for domestic law to decide which preferential claims would be prioritised over a

¹⁷ United Nations publication, Sales No. [E.17.V.5](#).

¹⁸ United Nations publication, Sales No.: [E.17.V.1](#).

security right, for further consideration. The Unidroit Secretariat agreed to conduct research to identify where this type of priority stands in a number of jurisdictions for the next Working Group session, so that the Working Group could consider whether it was appropriate.

17. The Working group agreed to set up an informal drafting committee that would be tasked with preparing the first set of draft provisions concerning those aspects on which the Working Group had reached consensus. In addition, the Unidroit Secretariat would create an informal subgroup that would be tasked to prepare background information on selected technological aspects for the next session in March.

18. The second session of the Working Group took place again via videoconference on 10–12 March 2021. The session was attended by 30 participants, comprised of 9 Working Group members; 17 observers including representatives of international and regional organisations as well as the private and public sector; and 4 members of the Unidroit Secretariat.¹⁹ The Working Group considered an issues paper prepared by the Unidroit Secretariat concerning the content of a future MLWR as well as the preliminary draft provisions for the MLWR that were prepared by the drafting committee established at the first session (hereafter the “Draft Provisions”).²⁰

19. The Working Group approved the broad approach proposed in the Draft Provisions, which did not establish any restrictions on who may issue a warehouse receipt. Consequently, the MLWR itself would allow both regulated and unregulated warehouses to issue receipts, and any implementing State would be able to establish any restrictions on who may issue receipts through its regulatory framework. As regards the warehouse operators, the Group agreed to define it as “a person who accepts goods for storage for reward on a professional basis”, and to include a definition of warehouse receipt in the next version of the Draft Provisions.

20. There was a preference within the Working Group for requiring that a warehouse receipt be issued if requested by depositor, but the Group agreed that this issue should be revisited before adopting a final decision. As regards the content of the warehouse receipt, the Working Group agreed on various essential terms to be included on a warehouse receipt, including name, and identification of the depositor; the name of warehouse operator and the address/location of the warehouse where the goods were deposited; a description of the nature, quantity and quality of the stored goods; an indication as to whether the warehouse receipt was issued to a named person, to the order of a named person, or to bearer, rather than whether it was negotiable or non-negotiable; the unique identification number of the receipt and the date of issue. The Working Group also agreed to consider including various additional information, probably on an optional basis, such as: storage fees or a reference to the storage agreement; an indication as to whether the stored goods were exempted from customs duties; and indication of a prior security interest or prior lien over the warehoused goods. The Working Group decided to further consider the consequences of missing or inaccurate information, while it preliminarily noted some might be essential information, in the absence of which a document would not characterise as a warehouse receipt, whereas other information could be mandatory yet not necessary for the receipt’s validity. As regards the form of the receipt, the Working Group agreed to have a provision allowing electronic receipts modelled on Article 10 of the MLETR, and to draw on the MLETR for drafting provisions on the control and transfer of an electronic warehouse receipt.

21. The Working Group had extensive discussions on the methods of transferring warehouse receipts and the legal position of the bearer/transferee of a warehouse receipt. The Working Group agreed that the Draft Provisions should protect the possessor against interference and clarify that the holder might pledge the rights

¹⁹ The report of the session, including the list of participants (Annexe I), is available in the page of the working group at the Unidroit website (www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts).

²⁰ The documents for the second session are available in the page of the working group at the Unidroit website (www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts).

arising out of the receipt by endorsement or mere delivery of the receipt. The Group agreed that the drafting committee should propose a wording that implemented that function in a manner that would be acceptable in different legal system. The Working Group arrived at essentially the same agreement after discussing the question of competing claims to the goods by the holder/transferee of the receipt and the holder of a security interest in the stored goods. The UNCITRAL secretariat stressed the importance of avoiding legal concepts and theories that were too deeply rooted in any particular legal systems and to draw on the large number of uniform texts dealing with security interests and negotiable instruments to develop solutions from a functional perspective in a legally neutral fashion.

22. As regards the rights conferred by the warehouse receipt, the Working Group agreed that the Draft Provisions should expressly provide that a security right in a negotiable warehouse receipt extended to the tangible assets covered by the receipt, provided that the issuer was in possession of the assets, directly or indirectly, at the time the security right in the receipt was created. The Working Group generally agreed that the relevant policy choices that were embodied in the MLST with regard to creation, perfection, priority, and enforcement should be adopted in the Draft Provisions as far as appropriate for warehouse receipts. The Group underlined the leeway for adapting the provisions to the specific needs of warehouse receipts without replicating the MLST. The Group invited the drafting committee to draft corresponding provisions for consideration by the Working Group at its next session.

III. Future meetings and drafting process

23. The third session of the Working Group is scheduled to take place on 1 to 3 September 2021. The Working Group is expected to consider a revised set of Draft Provisions reflecting its deliberations at its second session.

24. The Commission may wish to take note of the progress made by secretariat, in cooperation with Unidroit, in the development of a preliminary draft model law on warehouse receipts and request the secretariat to continue that work and report to the Commission on the progress made at its fifty-fifth session, in 2022.

25. The secretariats of UNCITRAL and Unidroit estimate that the joint preparatory work could be substantially completed by the Unidroit Working Group within two more sessions, with a view to its approval by the Unidroit Governing Council at its 101st session, in 2022, and subsequent transmittal to a UNCITRAL Working Group by the second half of 2022. The Secretariat expects that, at that time, it will be possible to assign the text on warehouse receipts to a working group, taking into account the timeframe of expected completion of projects currently handled by the six UNCITRAL working groups (see [A/CN.9/1068](#)).