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Work Programme

Warehouse receipts

Note by the Secretariat

Contents

	<i>Page</i>
I. Introduction	2
II. Preparatory work carried out by Unidroit and the Secretariat	4
III. Future meetings and drafting process	6



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 on 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 Working Group on a Model Law on Warehouse Receipts convened by Unidroit in consultation with the UNCITRAL secretariat (hereafter the “Working Group”) has held four sessions since its establishment. The progress made in the first two sessions of the Working Group has been summarized in a note ([A/CN.9/1066](#)) considered by the Commission at its fifty-fourth session (Vienna, 28 June–16 July 2021). The Commission took note of that with the appreciation of the progress made and agreed that the drafting of uniform provisions on the topic required a neutral and functional approach that respected differences in legal doctrines and practice among various legal systems. The Commission was mindful of the importance of giving the Working Group sufficient time to consider those matters and develop an acceptable solution and agreed that the Working Group might need more than two sessions before it could submit a preliminary draft model law on the private law aspects of warehouse

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

¹⁵ *Ibid.*, para. 61.

receipts for consideration by the Unidroit Governing Council, possibly at its 102nd session, in 2023, and subsequent transmittal to the first available UNCITRAL Working Group.¹⁶

12. The Working Group has since held two more sessions and one special workshop on electronic warehouse receipts. The third session, held in a hybrid format on 1–3 September 2021, was attended by 30 participants, comprised of 12 Working Group members; 13 observers including representatives of international and regional organisations as well as the private and public sector; and 5 members of the Unidroit Secretariat.¹⁷ At that session, the Working Group introduced the preliminary drafting suggestions covering the entire subject matter anticipated for the model law, namely provisions on scope of application and definitions, the role of party autonomy and interpretation; provisions on the form, minimum content and evidentiary value of warehouse receipts; transfer and protection of the legitimate holder of warehouse receipts and warranties in connection with the transfer of warehouse receipts.¹⁸ In particular the later set of questions proved to require further effort on the part of the Working Group given the different techniques and legal theories through which different legal systems achieved a substantially equivalent result in the protection of the legitimate holder and the need to ensure that the model law would accommodate different legal traditions.

13. The Special Workshop on Electronic Warehouse Receipts (“the special Workshop”) took place by videoconference on 26 January 2022. The participants agreed that the basic concepts and principles of the UNCITRAL Model Law on Electronic Transferable Records (MLETR)¹⁹ should provide the basis to address and formulate legal solutions to issues related to electronic warehouse receipts (EWR). That approach would build on the wide recognition enjoyed by the MLETR and ensure consistency and predictability in international trade. It would also tally with the aspiration to draft a MLWR as a forward-looking model, that reflects the developments on the ground and underlying practice in the market. The preservation of neutrality in addressing models, technology, and terminology would facilitate the adaptability of the MLWR to embrace future business models, technological developments, and emerging market practices. The participants noted that technological models operating in the market currently belonged to two main categories: models based on registry-based schemes or models operating as a token-based systems. Various sub-models are available within each category, be they single, centralised or multiple registries, general registries or sector-specific, public or private registers, etc. Besides, it must be noted that in many jurisdictions (all African EWR software solutions) EWR models for issuance, transfer or encumbrance are closely integrated in or interface with commodity exchange-trading and clearing platforms. Both models enabled paperless warehouse receipts and were data-based, albeit with some differences. Whereas registry-based models replaced the “actions of issuance, transfer, circulation” of the warehouse receipt with registrations in a (single or multiple) centralised register, token-based models might to a certain extent reproduce the “circulation” of conventional paper-based warehouse receipts under the new parameters of exclusive access or control. Even if these two models were the ones currently in operation, technological progress and business evolution could soon trigger new models and, therefore the guide to enactment of the future model law should provide forward-looking specifications and guidance to assists parties and other actors to design law-compliant models and render the MLWR conducive to any future development in technological models for EWRs.

¹⁶ *Ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 220.

¹⁷ The report of the third 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).

¹⁸ The documents for the third 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).

¹⁹ United Nations publication, Sales No. E.17.V.5.

14. The fourth session of the Working Group took place in a hybrid format on 28 February–2 March 2022 and was attended by 30 participants, comprised of 12 Working Group members; 13 observers including representatives of international and regional organisations as well as the private and public sector; and 5 members of the Unidroit Secretariat.²⁰ The Working Group considered a revised version of the preliminary drafting suggestions that reflected the deliberations and conclusions reached at its third session as well as views and suggestions exchanged at the Special Workshop.²¹ The Working Group confirmed generally the scope of the model law as it had emerged from its third session and made various significant improvements to the drafting and structure of the provisions. The Working Group also confirmed the importance of ensuring consistency between the provisions on electronic warehouse receipts and relevant UNCITRAL instruments, in particular the MLETR. The Working Group also agreed to keep any possible provisions on security interests in warehouse receipts to a minimum, so as not to interfere with the enacting state's general framework for secured transactions, which, in line with the UNCITRAL Model Law on Secured Transactions (MLST),²² should deal with matters such as creation, effectiveness and priority of security interests in negotiable instruments and extend automatically to warehouse receipts.

III. Future meetings and drafting process

15. The fifth session of the Working Group is scheduled to take place on 1 to 3 September 2022. The Working Group is expected to consider a revised set of Draft Provisions reflecting the deliberations at its fourth session, as well as an additional set of provisions on rights and obligations of warehouse operators, which the Working Group requested the Unidroit secretariat to prepare with the assistance of one of its members.

16. 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-sixth session, in 2023.

17. 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 102nd session, in 2023, and subsequent transmittal to a UNCITRAL Working Group by the second half of 2023. 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.9/1103](#)).

²⁰ The report of the fourth 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).

²¹ The documents for the fourth 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).

²² United Nations publication, Sales No.: E.17.V.1.