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Report of Working Group I (Warehouse Receipts) on the work of its forty-first session

I. Introduction

Consideration of a draft model law on warehouse receipts with draft guide to enactment

1. At its forty-first session, the Working Group undertook a second reading of the draft model law on warehouse receipts and a reading of the draft guide to enactment of the UNCITRAL/UNIDROIT model law on warehouse receipts on the basis of the text contained in two notes by the Secretariat ([A/CN.9/WG.I/WP.133](#) and [A/CN.9/WG.I/WP.134](#), respectively) with a view to their completion and transmission to the Commission for adoption at its fifty-seventh session, in 2024.

II. Organization of the session

2. The Working Group, which was composed of all States members of the Commission, held its forty-first session in New York from 5 to 9 February 2024.

3. The session was attended by representatives of the following States members of the Working Group: Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China, Côte d'Ivoire, Dominican Republic, France, Germany, Hungary, India, Iran (Islamic Republic of), Iraq, Italy, Japan, Kuwait, Malaysia, Mexico, Morocco, Nigeria, Panama, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Spain, United States of America and Viet Nam.

4. The session was attended by observers from the following States: Egypt, El Salvador, Madagascar, Oman, Paraguay, Philippines and Senegal.

5. The session was also attended by observers from the following international organizations:

(a) *Intergovernmental organizations*: International Institute for the Unification of Private Law (UNIDROIT);

(b) *Invited international non-governmental organizations*: European Law Students Association (ELSA), Factors Chain International (FCI), International



Association of Young Lawyers (AIJA), International Law Institute (ILI) and International and Comparative Law Research Center (ICLRC).

6. The Working Group elected the following officers:
Chair: Mr. Bruce Whittaker (Australia)
Rapporteur: Mr. Ngoran Justin Koffi (Côte d'Ivoire)
7. The Working Group had before it the following documents:
 - (a) Annotated provisional agenda ([A/CN.9/WG.I/WP.132](#));
 - (b) Note by the secretariat containing a draft model law on warehouse receipts ([A/CN.9/WG.I/WP.133](#)); and
 - (c) Note by the secretariat containing a draft guide to enactment of the UNCITRAL/UNIDROIT model law on warehouse receipts ([A/CN.9/WG.I/WP.134](#)).
8. The Working Group adopted the following agenda:
 1. Opening of the session and scheduling of meetings.
 2. Election of officers.
 3. Adoption of the agenda.
 4. Consideration of a draft model law on warehouse receipts together with a draft guide to enactment of the model law on warehouse receipts.
 5. Adoption of the report.

III. Deliberations and decisions

9. The Working Group completed its review of the draft model law on warehouse receipts on the basis of the text contained in document [A/CN.9/WG.I/WP.133](#) as well as of the draft guide to enactment of the UNCITRAL/UNIDROIT model law on warehouse receipts contained in document [A/CN.9/WG.I/WP.134](#). The Working Group requested the secretariat to make the corresponding substantive and editorial amendments to both texts and agreed to recommend to the Commission the adoption of the Model Law on Warehouse Receipts and its Guide to Enactment at its fifty-seventh session, to be held in New York in 2024.¹ The summary of deliberations of the Working Group may be found in chapter IV below.

IV. Consideration of a draft model law on warehouse receipts with draft guide to enactment

A. Draft model law on warehouse receipts

10. The Working Group heard a general introduction to the functional equivalence and medium neutral approaches underlying the provisions on electronic warehouse receipts. It was indicated that similar results could be achieved under both approaches, and that both approaches were in line with the provisions of the UNCITRAL Model Law on Electronic Transferable Records (MLETR), which permitted the use of electronic warehouse receipts when a law on paper-based warehouse receipts existed.

11. While there was support for adopting a functional equivalence approach to maintain consistency with the MLETR and benefit from existing and widely supported provisions, the prevailing view in the Working Group favoured adopting a medium neutral approach, which was in line with the policy objectives of promoting digitalization of warehouse receipts. Examples were heard of recent legislation in

¹ *Official Records of the General Assembly, Seventy-eighth Session, Supplement No. 17 (A/78/17)*, paras. 24 and 314.

developed and developing countries promoting the use of electronic warehouse receipts.

12. It was noted that the term “medium neutral” could have several tiers of meaning. It could encompass the functional equivalence approach, an approach where there were effectively two instruments, paper and electronic, which were catered for individually, or a truly medium neutral approach which did not have separate provisions for paper and electronic instruments and all provisions would be applied uniformly to both. The Working Group accepted that the model law would take the second approach.

13. General support was expressed for the model law to maintain alignment with the MLETR. It was suggested that the guide to enactment to the model law should indicate that jurisdictions wishing to enable the use of electronic warehouse receipts without modifying existing law should consider adoption of the MLETR. Conversely, the guide to enactment should also explain how jurisdictions that had already adopted the MLETR but were missing a warehouse receipt law could best enact the model law, for instance by omitting provisions already contained in their enactment of the MLETR.

14. A question was raised on the possible retention of Chapter VI under a medium neutral approach. It was explained that Chapter VI contained a comprehensive set of provisions needed for the operation of electronic warehouse receipts. In response, it was indicated that the operative provisions of Chapter VI had been incorporated elsewhere in the model law, except for draft articles 37 and 38, which could be found in other national law, and draft article 39, which was unnecessary given the decision that electronic warehouse receipts should not be endorsed. It was decided on that basis that Chapter VI of the model law should be deleted. After discussion, the Working Group agreed to retain the word “paper” outside square brackets and delete the word “non-electronic” throughout the model law.

15. A delegation suggested to include provisions allowing the transfer and pledge of receipts through a system of registry in the accounts of the operator. In response to that suggestion, it was reminded that the model law was compatible with the use of any model, being registries or token-based systems, which was dealt with in the draft guide to enactment ([A/CN.9/WG.I/WP.134](#), para. 36). The Working Group did not take up that suggestion, without prejudice to its consideration by the Commission at its fifty-seventh session.

Chapter I. Scope and general provisions

Article 1 – Scope of application

16. The Working Group agreed to replace the words “mentioned in” with “covered by”, aligning the wording with article 16 of the UNCITRAL Model Law on Secured Transactions (MLST).

17. In response to a suggestion to specify whether the undefined word “signature” would also include authentication methods such as stamps or mechanical signs, the Working Group was reminded that the model law relied on the understanding of “signature” under the laws of the enacting State.

18. The Working Group agreed to defer consideration of the words in square brackets, pending discussion of specific aspects of electronic warehouse receipts (see para. 14 above).

Article 2 – Definitions

19. Suggestions to include in the definition section additional definitions for terms used in the model law such as “endorsement”, “endorsee” or “warehouse” did not receive support. The view was also expressed that the current definition of warehouse receipt was not adequate. The Working Group took note of that view.

“Non-negotiable warehouse receipt”

20. The Working Group agreed to add a reference in the guide to enactment to the need for the issuer to indicate clearly when a warehouse receipt was non-negotiable, for instance by using language prohibiting its transfer or equivalent formulations.

“Holder”

21. The Working Group agreed to delete subparagraph 3(c), which overlapped with subparagraph 3(f). The Working Group heard suggestions to streamline and simplify the draft definition, in particular by finding common terms for the different concepts used in paper and electronic contexts. The Working Group agreed to defer consideration of that issue, pending discussion of specific aspects of electronic warehouse receipts.

“Storage agreement”

22. It was argued that the issuance of a warehouse receipt was a legal consequence of the storage agreement and that it would be important to elaborate on the legal regime of the storage agreement itself. In addition, it was said that in several jurisdictions the regulatory regime excluded micro and small warehouse operators from the obligation to issue warehouse receipts and that documentary representation of the goods may suffice to obtain finance. In response, it was noted that the model law was not concerned with the storage agreement and that it did not impose an obligation on small warehouse operators to issue warehouse receipts. If no warehouse receipt was issued, the draft model law would simply not apply. At the same time, it was noted that many jurisdictions regulated public warehouses and required them to issue warehouse receipts when requested by their customers.

23. After discussion, there was support for admitting some degree of party autonomy as to the issuance of warehouse receipts by redrafting paragraph 1 of draft article 6 as follows: “A warehouse operator shall issue a warehouse receipt in relation to the goods after receiving them for storage if requested by the depositor, in accordance with the terms of the storage agreement”.

24. With a view to further distinguishing ordinary deposit from storage agreements leading to the issuance of warehouse receipts, it was suggested to insert a qualification that the goods stored would “be capable of being transferred or pledged by the transfer of the warehouse receipt”. There was no support for that suggestion since the model law left for the parties to decide whether to sell or pledge the goods, and recognized non-negotiable warehouse receipts.

Article 3 – Form of warehouse receipts

25. There was no support for the suggestion to permit the concomitant issuance of electronic and paper warehouse receipts, since a duplicity of documents of title in respect of the same goods would undermine legal certainty. In response to a suggestion to include in the model law an obligation to issue electronic warehouse receipts only, which could come with a safeguard to allow issuance of paper-based warehouse receipts if electronic form was not possible, the Working Group noted that paragraph 23 of the draft guide to enactment allowed for the use of the law in a pure electronic setting when the context so permitted. It was felt, however, that the model law should not be prescriptive on this point to accommodate different situations.

26. Considering, however, the draft article redundant with article 1, the Working Group agreed to delete it.

Article 4 – Party autonomy

27. The Working Group agreed that the use of the word “parties” in both options was misleading as some persons outside of contractual arrangements, such as the holder, would be encompassed by the provision.

28. The Working Group recalled its earlier deliberations on the great diversity of regulatory regime that could be in place to implement a warehouse receipt legal framework. The need to retain the two options to accommodate such diversity was emphasized. The Working Group agreed to keep both options in the draft text and to revisit the issue, as well as the identification of the provisions capable of being derogated from, once it would have considered the entire model law. The Working Group also agreed that article 3 MLST offered a more adequate formulation for use in both options.

29. After discussion, the Working Group agreed to retain option 1 of draft article 4 and to delete option 2. It was explained that, notwithstanding article 4, the parties retained autonomy to vary the terms of the storage agreement. If, however, such terms were incorporated in the warehouse receipt, they would have to adhere to the model law. The Working Group agreed that the guide to enactment should confirm that article 4 did not mean that an intermediary was prevented by article 21 from making additional representations and that a transferor was prevented by article 22 from guaranteeing the performance by the warehouse operator of its obligations.

Chapter II. Issuance and contents of a warehouse receipt; alteration and replacement

Article 6 – Obligation to issue a warehouse receipt

30. Noting its earlier discussions in connection with the definition of “storage agreement” (see para. 23 above), the Working Group did not accept a suggestion to refer in paragraph 1 to regulations that mandated the issuance of warehouse receipts, especially to large warehouse operators. It was agreed, however, that this might be mentioned in the guide to enactment.

31. In response to a query, it was indicated that the warehouse operator could be a collateral manager and, as such, issue warehouse receipts.

32. It was noted that the storage agreement was concluded before the issuance of the warehouse receipt, and that the model law dealt with the warehouse receipt and not with the storage agreement. After discussion, the Working Group agreed to delete paragraph 2.

Article 6 bis – Electronic warehouse receipts

33. It was noted that the reference to “is issued” in the chapeau was inaccurate as article 6 bis listed only some of the conditions for the valid issuance of an electronic warehouse receipt. The Working Group agreed to replace the chapeau with the following: “An electronic warehouse receipt shall use a reliable method.”

34. It was indicated that the model law applied to warehouse receipts and that creation occurred at a point in time preceding the issuance of a warehouse receipt. However, it was also said that the warehouse receipt management system needed to use reliable methods in all relevant stages of the warehouse receipt life cycle. After discussion, the Working Group agreed to replace the word “creation” with “issuance” and to delete the words “effect or”.

35. It was also indicated that paragraph 3 of draft article 15, which qualified the notion of control, was applicable throughout the lifecycle of the electronic warehouse receipt and not only at the time of its transfer. The Working Group agreed to place draft article 15, paragraph 3 as second paragraph of draft article 6 bis, and to replace its chapeau with the words “An electronic warehouse receipt shall use a reliable method.”

36. The Working Group also agreed to place draft article 15 bis at the end of draft article 6 bis, and to delete the words “For the purposes of articles 6 bis and 15”.

37. A query was raised about the interaction of the reference to “authorized changes” in draft article 6 bis, on the one hand, and the ability to enter unauthorized changes under draft article 12, on the other hand. It was explained that the two

provisions operated on different levels, the former dealing with integrity of the record while the latter dealing with the legal effect of alterations. It was added that, while effective exercise of control of the electronic warehouse receipt could reduce the possibility of unauthorized alterations, that possibility could not be excluded, especially in hybrid systems (e.g. an electronic warehouse receipt contained in a token stored on a physical support).

Article 7 – Representation by the depositor

38. There was some support for the view that the draft article dealt with central matters of the storage agreement but was potentially confusing in connection with warehouse receipts, especially as it did not state the consequences of any misrepresentation by the depositor. Moreover, it was unclear in whose benefit those representations were made. The prevailing view was that the consequences of misrepresentation would be governed by other laws of the enacting State and that rendering the warehouse receipt invalid would be an excessive sanction. By the same token, imposing an obligation on the warehouse operator to verify the representations by the depositor would unnecessarily burden the issuance of warehouse receipts. It was clarified that the provision protected the warehouse operator, for instance in the case of competing claims, but that, ultimately, the provision also protected the holder by affording a course of action against the depositor, when necessary, despite the absence of a contractual link.

39. There was no support for a suggestion to add a subparagraph (c) requiring the depositor to represent that the goods could be legally traded in the country and that their deposit did not contravene mandatory laws, such as laws on money-laundering, illicit substances, or hazardous goods. The Working Group agreed, however, that the model law would not affect the application of any mandatory laws and would not relieve depositors and warehouse operators from the duty to comply with them. With a view to further stressing the context in which the representations contemplated by the draft article were made, and whom they were intended to benefit, it was also agreed to replace the words “at the time of deposit” with “when requesting the issuance of a warehouse receipt”, placing them at the opening of the sentence, and to include a reference to subsequent holders along with the warehouse operator in the chapeau of the draft article. The Working Group further agreed to:

- (a) Also mention non-negotiable warehouse receipts in subparagraph (a);
- (b) Attenuate the obligation in subparagraph (b) by clarifying that the representation was made “to the best of knowledge of the depositor”;
- (c) Request the secretariat to make consequential changes in the drafting of the article and reconsider its placement either before or immediately after article 6;
- (d) Clarify in the guide to enactment that when the depositor requested the issuance of a warehouse receipt, those representations were deemed to be made by operation of law, without the need for any additional formalities or declarations from the depositor.

Article 8 – Incorporation of storage agreement in the warehouse receipt

40. The Working Group discussed at length the objectives pursued by the draft article. Some delegations expressed concerns that holders would be imposed obligations arising from a storage agreement, the content of which they might not be aware of, or that might be governed by a different law. It was suggested that a sound legal framework for warehouse receipt should require that the holder of a warehouse receipt be bound by the terms of the warehouse receipt only. A subsequent proposal, which did not receive support, was to list specific terms from the storage agreement that would be incorporated in the warehouse receipt and exclude others.

41. During ensuing deliberations, the prevailing view supported retaining the provision. It was clarified that article 8 did not entail novation of the storage agreement but intended to ensure that a potential holder was informed of some key

obligations of the contract (e.g. limitation of liabilities) and would not repudiate them afterwards. It was said that a potential transferee would usually request a copy of the storage agreement, and that the second paragraph constituted a sufficient safeguard against unreasonable reliance on the storage agreement against a third party (i.e. the transferee). The Working Group agreed to elaborate in the guide to enactment on the scope of the provision and its intended effect.

42. While there was support for the proposition that the terms of the storage agreement should be binding on any holder by operation of law, there was agreement that such effect should exist where the warehouse receipt itself referred to the storage agreement, in which case the terms of the agreement should be made available. The Working Group agreed to redraft paragraph 1 to state that a warehouse receipt “may state that it includes some or all terms of the storage agreement”, to require the warehouse operator in such a case to make a copy of the storage agreement or the relevant provisions available to potential transferees on request by the current holder, and to delete the corresponding requirement in draft article 9, subparagraph 1(l) (see para. 48 below). The Working Group also agreed to redraft paragraph 2 as proposed in footnote 10 of document [A/CN.9/WG.I/WP.133](#).

Article 9 – Information to be included in a warehouse receipt

43. A suggestion to add to the list in paragraph 1 of draft article 9 (a) a statement on the negotiable or non-negotiable nature of the warehouse receipt (see also [A/CN.9/1158](#), para. 45) and (b) information on the quality of the goods did not gather support. However, the Working Group agreed that the guide to enactment should note that regulation may subject the licencing of warehouses to a demonstration of the operator’s capacity to properly inspect and verify the quality of goods.

44. It was further suggested to add a reference to the maximum storage time of perishable goods in paragraph 1. In response, it was said that this matter was already covered under subparagraph (h). However, it was noted that that maximum storage time and the fixed period of storage could not coincide especially in case of extension of deposit. Another view was that the maximum storage time could be indicated with the description of the goods. It was agreed that, while the model law could not cater to specific types of goods given the variety of special regimes and their diversity, the guide to enactment should discuss the issue.

45. It was explained that, while subparagraph (e) referred to identifying the warehouse operator and its place of business, subparagraph (i) referred to the actual location where the goods were stored. It was also indicated that the word “identifier” in subparagraph (j) better captured various instances of identifying the warehouse receipt.

46. In response to a query, it was indicated that subparagraph (g) required the warehouse operator to indicate only those third parties’ rights that had been disclosed to it by the depositor.

47. It was indicated that the references contained in paragraph 2 to draft articles 1 and 2 were redundant because meeting the requirements set out in draft article 1, paragraph 2 was essential for the existence of the warehouse receipt and therefore the application of the model law.

48. The Working Group agreed to the following suggestions:

(a) To request the secretariat to ensure a consistent use of the words “rights” and “claims” throughout the text;

(b) To retain the word “identifier” and delete the words “identification number” in subparagraph (j);

(c) To delete the words “and a statement that a copy of the storage agreement shall be made available on request by the current holder to potential transferees” in subparagraph (l) (see para. 42 above);

(d) To delete the words “provided that it nevertheless meets the requirements set out in paragraph 2 of article 1 [and of paragraphs 4 or 5 of article 2],” in paragraph 2;

(e) To include the word “missing,” before the word “incomplete” in paragraph 2.

Article 10 – Additional information that may be included in a warehouse receipt

49. The Working Group agreed to align paragraph 2 of draft article 10 with paragraph 2 of draft article 9 by deleting the words “provided that it nevertheless meets the requirements set out in paragraph 2 of article 1 [and of paragraphs 4 or 5 of article 2],”.

50. It was indicated that retention of paragraph 4 of draft article 10 might have some value, in particular with regard to the automated inclusion of information. In response, it was noted that, while indeed certain information could be included only in electronic warehouse receipts, paragraph 1 already provided for such possibility, especially under a medium neutral approach. After discussion, the Working Group agreed to delete paragraph 4 and discuss relevant issues in the guide to enactment.

Article 11 – Goods in sealed package and similar situations

51. It was suggested that an obligation of the warehouse operator to inspect the goods should be inserted in draft article 11. In response, it was indicated that, while the warehouse operator had a general obligation to inspect the goods, this was not possible or desirable in the cases foreseen in draft article 11, and that introducing such obligation might lead to the undesirable result of having the warehouse operator decline storage. After discussion, the Working Group decided to retain draft article 11 without modifications, to note in the guide to enactment the role of regulations in setting inspection standards for warehouse operators (see also para. 43 above) and to advise in the guide to enactment that warehouse operators should not make excessive use of draft article 11 as the resulting warehouse receipts would have limited commercial value.

Article 12 – Alteration of a warehouse receipt

52. It was indicated that paragraph 1 of draft article 12 stated a general rule of broad application and, as such, was redundant. It was emphasized that, by validating unilateral insertion of information, which was exceptional, paragraph 2 of draft article 12 placed a disproportionately high risk on warehouse operators for leaving blank fields and could promote fraud. It was noted that draft article 9, paragraph 2 already provided for liability of the warehouse operator for missing information, that additional elements could be drawn from the incorporation in the warehouse receipt of some or all terms of the storage agreement under draft article 8, and that the warehouse receipt had in any case to comply with the information requirements contained in draft article 1, paragraph 2. After discussion, the Working Group agreed to delete draft article 12.

Article 13 – Loss or destruction of a warehouse receipt

53. The Working Group agreed to delete the qualifiers “adequate” and “appropriate” in paragraph 1, as they introduced uncertainty. The Working Group accepted a suggestion to insert a new subparagraph recognizing the right of the warehouse operator to reimbursement of additional cost reasonably incurred by the replacement of the warehouse receipt.

54. The Working Group considered suggestions to specify the time frame (e.g. two weeks, without undue delay) for the warehouse operator to issue a replacement warehouse receipt. The Working Group agreed, instead, that such time frame would be more appropriately set out in domestic law and that the draft guide to enactment should elaborate on the role of regulations in that respect.

55. The Working Group agreed to replace paragraph 2, subparagraph (a) with the following sentence: “‘Loss or destruction’ in paragraph 1 occurs when any of the conditions necessary for establishing the existence of control set out in article 6 bis paragraph 2, or any of the conditions for an electronic warehouse receipt set out in article 6 bis paragraph 1, cease to be met.”

56. Having heard that in some jurisdictions the loss and possible replacement of warehouse receipts may involve administrative or other authorities, the Working Group requested the secretariat to clarify in the guide to enactment that the procedure described in paragraph 3 could be modified by the enacting State.

57. The view was expressed that draft article 13 did not consistently address the various issues that could arise from the loss or destruction of a warehouse receipt. It was said that loss of a paper warehouse receipt would most likely imply a fault of the holder, whereas in the electronic context, the loss could result from a technical error or system malfunction attributable to the issuer or the platform operator. In response, it was noted that not all instances of loss of electronic warehouse receipts could be attributed to the warehouse operator, which might not have control over, for instance an electronic registry or a blockchain-based trading platform for warehouse receipts. It would be difficult to draft provisions adequate to all possible scenarios. It was also observed that any requirement the warehouse operator might impose on the holder requesting a replacement receipt had to be reasonable as required in the chapeau of article 13, paragraph 1. This would address the concern that the holder might be disadvantaged when it was not responsible for the loss or destruction of the warehouse receipt.

58. The Working Group considered at length the scope of paragraph 5 and its relationship to paragraphs 1 and 3, as well as various proposals for aligning them. Pursuant to one view, those provisions were internally inconsistent. Subparagraph 1(c) allowed the warehouse operator to require an indemnity from the holder in relation to the issuance of the replacement warehouse receipt, and security in support of that indemnity, whereas the second sentence of paragraph 3 required the party applying to the court for the replacement of a lost negotiable warehouse receipt to deposit security to indemnify the warehouse operator against claims by the holder of the lost receipt. Both provisions, it was said, assumed that the warehouse operator could be exposed to claims from conflicting parties, namely: the holder of the replacement warehouse receipt and possibly the holder of the original warehouse receipt, if it was found. The solution, it was said, should be to expand paragraph 5 to acknowledge that a person who, in good faith, acquired the warehouse receipt believed to have been lost or destroyed might have a right to claim damages also from the warehouse operator. The prevailing view that eventually emerged was that a prudent person acquiring a warehouse receipt would normally verify the validity of the warehouse receipt with the warehouse operator. Moreover, evidentiary, notice and other procedural requirements followed by a court or other authority under paragraph 3 would in most cases put the public on notice that a warehouse receipt was claimed to have been lost, so that the purchaser of a warehouse receipt with actual or constructive knowledge of its loss would not be able to assert good faith in a claim against the warehouse operator. In order to clarify the operation of the draft article, however, the Working Group agreed to delete the second sentence of paragraph 3, but to retain paragraph 5, together with subparagraph 1(c), which was felt to address a different situation.

Article 14 – Change of medium of a warehouse receipt

59. The Working Group noted that draft article 14 operated in a different context from articles 17 and 18 MLETR and that a change of medium would not affect the validity of a warehouse receipt. The Working Group agreed to retain draft article 14 unchanged.

Chapter III. Transfers and other dealings in negotiable warehouse receipts

Article 15 – Transfer of a negotiable warehouse receipt

60. Upon consideration of the use of the word “endorsement” in paragraph 2, the Working Group recalled its earlier deliberations on the medium neutral approach to be adopted for the model law (see paras. 10–14 above). The Working Group agreed to delete that word because of its paper-based connotation. The Working Group noted that the medium neutral approach required similar and consequential changes throughout the text, which it requested the secretariat to implement. For instance, as a consequence, draft article 15, paragraph 2 would read: “An electronic negotiable warehouse receipt may be transferred by transfer of control”. However, it was noted that the text would need to remain technology neutral and future proof and that such redrafting would require careful consideration, as complex technologies such as distributed-ledger technology or blockchain were yet to be tested in the context of warehouse receipts. It was also recalled that several national laws adopted a functional equivalence approach, and that the guide to enactment should elaborate on how its articles would operate in those jurisdictions.

Article 15 bis – General reliability standard for electronic warehouse receipts

61. A suggestion to replace the word “declaration” with “certification” in subparagraph (a)(vi) did not receive support as certification schemes were not universally in place. It was added that such issue had a regulatory nature. The Working Group agreed to discuss in the draft guide to enactment this issue in light also of the relevant provisions of the MLETR and of the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services.

Article 16 – Rights of a transferee generally

62. A question was raised on how the model law would deal with cross-border transfer of rights of transferees and choice of law issues. It was noted that the model law remained confined to substantive law aspects. The Working Group took note that the MLST provided conflict of laws rules for documents of titles that might be relevant to complement the model law on private international law matters.

Article 17 – Protected holder of a negotiable warehouse receipt

63. The Working Group confirmed its understanding that the notion of good faith in subparagraph 1(b) would be left to the appreciation of the domestic law of the enacting State.

64. The Working Group agreed to place paragraph 2 in square brackets to acknowledge that not all jurisdictions had registries of security rights. In connection with that provision, the Working Group noted that the standard of knowledge that enhanced the protection of the holder vis-à-vis secured creditors in paragraph 2 should not be understood to extend to the representation made by the depositor under article 7.

Article 18 – Rights of a protected holder of a negotiable warehouse receipt

65. It was noted that the two options contained in paragraph 1 of draft article 18 reflected two fundamentally different approaches, and there was broad support for keeping both options in the model law, so as to make it compatible with all legal traditions.

66. It was explained that paragraph 2 would apply only after paragraph 1 did and that the Working Group had agreed to clarify in the guide to enactment that the model law did not affect any right of indemnity that may be available to the holder against the warehouse operator under other law ([A/CN.9/1158](#), para. 76).

67. After discussion, the Working Group decided to keep both options of paragraph 1; delete the word “property” and add the words “under other law” at the

end of subparagraph (b) of option 2 of paragraph 1; replace the words “against any person other than the protected holder” with the words “against any other person” in paragraph 4; replace the word “it” with the words “the warehouse operator” at the end of paragraph 4.

Article 19 – Third-party effectiveness of a security right

68. Noting that draft article 19 dealt with the third-party effectiveness of a security right and not with its creation, the Working Group agreed to delete the words “granted and”.

Article 20 – Representation by a transferor of a negotiable warehouse receipt

69. In light of the need to align draft article 20 with the two options of paragraph 1 of article 18, the Working Group agreed to replace the words “ownership of” with the words “rights to”. The Working Group agreed that, as was the case with article 7, the representation in article 20 was by operation of law and did not require an act by the holder. It was observed that subparagraph (b) contemplated a representation of the holder’s knowledge of possible impediment to a transfer of rights and did not presuppose the existence of those rights.

Article 21 – Limited representation by intermediaries

70. A query was raised on the scope of draft article 21 and its relationship with the law of agency. Support was expressed for the deletion of the draft article. In response, it was indicated that draft article 21 played an important role in protecting financial intermediaries acting on behalf of the holder. With a view to clarifying the provision, the Working Group agreed to redraft it as follows:

“An intermediary that is known to be entrusted with warehouse receipts on behalf of another person may exercise all rights arising out of the receipt, but represents by the transfer of a negotiable warehouse receipt only that it is authorized to do so and does not make the representations referred to in article 20”.

Article 22 – Transferor not a guarantor

71. It was indicated that, by relieving the transferor from responsibility for the warehouse operator’s breach of its duty of care, the draft article might create a tension with the underlying contract of sale, and the seller’s obligation to deliver goods fit for purpose. For that reason, it was suggested that the model law should allow the parties to vary those draft articles under draft article 4. In response, it was indicated that those draft articles aimed at facilitating circulation of warehouse receipts without affecting the obligations arising under other law such as contracts for sales of goods.

72. After discussion, the Working Group agreed to retain the text of draft article 22 without modifications, to replace its title with “Transferor not responsible for the warehouse operators’ performance”, and to ensure that the content of the article would reflect its title in all language versions.

Chapter IV. Rights and obligations of the warehouse operator

Article 23 – Duty of care

73. The Working Group discussed extensively draft article 23 and the envisaged duty of care of the warehouse operator. The current formulation was criticized for not indicating clearly that it covered only the warehouse receipt and not the storage agreement. Also, the level of care contemplated therein seemed too low to ensure the commercial value of warehouse receipts. The draft article should promote higher standards of care through provisions in the warehouse receipt; it should also become clear that it contemplated a statutory minimum default standard and that any attempt by the warehouse operator to lower that minimum standard would be invalid.

Moreover, the words “operator in that particular trade” were ambiguous and the standard should be that of a “diligent and competent owner of goods of that type”.

74. There was support for those comments, as well as for the view that the formulation of the second paragraph implied that the warehouse operator could unilaterally change the duty of care, which would not be permitted in many legal systems. At the same time, the Working Group was reminded that, in practice, commercial contracts often provided for exclusions or limitations of liability, and that such clauses were valid within certain boundaries. The draft should provide that the duty of care should not be lowered and should prohibit clauses excluding or limiting liability for fraud, gross negligence or the like. However, a suggestion to set specific standards of compensation, for instance, at an amount equal to the declared value of the goods, did not receive support as it was felt to be better left for the enacting State’s general rules on damages for tort or breach of contract.

75. After discussion, the Working Group agreed to replace the words “operator in that particular trade” with “owner of goods of that type” in paragraph 1 and to redraft paragraph 2 as follows:

“The warehouse receipt may contain limitations and conditions to the obligations of the warehouse operator under this article, but any clause purporting to lower the duty of care in paragraph 1 or to exclude or limit the warehouse operator’s liability for its fraud, wilful misconduct, gross negligence, or misappropriation of the goods should be null and void. The invalidity of such a clause shall not affect the validity of the warehouse receipt as such.”

76. A proposal to expand the last sentence of the newly redrafted paragraph 2 to other aspects of the draft law did not receive support.

Article 24 – Duty to keep goods separate

77. The Working Group agreed to clarify the meaning of paragraph 1 by adding the words “covered by each receipt” between “goods” and “separate”.

78. The Working Group agreed to delete the words “and the storage agreement” in paragraph 2.

Article 25 – Lien of the warehouse operator

79. A suggestion was made to delete the word “reasonably” in subparagraph 1(c), as an expense necessary to preserve the goods should be deemed reasonable. However, recalling earlier deliberations (A/CN.9/1158, para. 84), the Working Group agreed to retain that word, but to make it clear that it qualified the word “expenses”.

80. The Working Group agreed to replace the words “specified on the face of” with “expressly stated in” to be consistent with the medium neutral approach of the model law (see paras. 10–14 above).

81. The Working Group agreed to add the words “in its possession” after the word “goods” in paragraph 1.

82. Some delegations suggested to replace the word “lien” with a more neutral term such as “right of preference” or “right of retention”, or to clarify the extent of the prerogatives that the lien was intended to confer to the warehouse operator (e.g. a right to keep or retain, to refuse to deliver, or to sell the goods). The prevailing view, however, was that the word “lien” conveyed adequately the intended effect and that its practical implementation would be governed by relevant laws in the enacting States (e.g. enforcement), which the guide could clarify.

83. Questions were asked as to the meaning of “proceeds” in paragraph 1 (whether it covered, e.g. insurance proceeds, or proceeds from the sale of a warehouse receipt between holders). The prevailing view was that the article was meant to be general and that the exact meaning of the word “proceeds” in that context would be governed by the relevant laws in the enacting States.

84. In response to a suggestion that subparagraph 1(d) was vague and could be deleted, it was explained that the provision envisaged situations where the warehouse operator and the holder had multiple dealings. The Working Group requested the secretariat to elaborate in the guide to enactment on the intended application.

85. The Working Group requested the secretariat to clarify in the guide to enactment that the model law did not intend to provide a priority regime for the warehouse operator's lien vis-à-vis third parties and that relevant laws of the enacting State would govern that aspect.

Article 26 – Obligation of a warehouse operator to deliver

86. The concern was expressed that the word “deliver” implied a broad obligation to accede to costly and unrealistic demands from the holder regarding the delivery of the goods, including across borders. It was suggested to define the meaning of “deliver”, which could have different understandings (e.g. deliver for pick up, loading), or refer to the ICC Incoterms 2020. A suggestion to provide that delivery should be made at the place indicated in accordance with article 9(1)(i) was considered too restrictive. The Working Group agreed that the intended meaning was to release the goods to the holder and not to oblige the warehouse operator to send them to a different location. After discussion, the Working Group agreed to retain the current text, but delete the words “as instructed by the holder of the warehouse receipt” and insert the words “to the holder or a person nominated by the holder” after the word “holder”. Consequential changes were noted throughout the text (e.g. draft article 27).

87. The Working Group agreed to delete the words “possession or control of” in subparagraph 1(b) to be consistent with the medium neutral approach (see paras. 10–14 above). Consequential changes were noted throughout the text (e.g. draft article 27).

Article 28 – Split warehouse receipt

88. The Working Group agreed to: (a) add in the guide to enactment that the warehouse operator may be obliged to identify the goods corresponding to the newly issued warehouse receipts in case of a split; (b) add in the draft article a reference to the warehouse operator's obligation to cancel the original warehouse receipt, similarly to article 26, paragraph 2.

Article 30 – Termination of storage by the warehouse operator

89. The Working Group agreed to replace the words “owned to it” with “secured by the lien” in subparagraph 1(a).

90. Suggestions to deal in subparagraph 1(b) and in paragraph 2 with the distribution of surplus generated after the enforcement of the lien and procedural conditions for the public sale of the goods did not receive support, as those matters were expected to be treated in other laws of the enacting States. However, the Working Group agreed to refer to the law of the enacting State governing public sale proceedings in subparagraph 1(b) and to elaborate on its usual features in the guide to enactment.

91. The Working Group agreed to add the following new paragraph:

“3. If the warehouse operator in good faith determines that, within the time provided in subparagraph 1(a), the goods are about to deteriorate or decline in value to less than the amount secured by its lien, the warehouse operator may specify in the notice given under subsection 1(a) any reasonably shorter time for removal of the goods and, if the goods are not removed, may sell them in accordance with subparagraph 1(b).”

92. A suggestion to delete the words “in any lawful manner” in paragraph 3 did not receive support.

[Chapter V. Pledge bonds]

93. The Working Group heard explanations about the practical functioning of the dual warehouse receipts systems and its economic benefits, for instance with respect to lower financing costs, and facilitating access to credit by allowing simultaneously trade in stored commodities and secured enterprise cashflow financing through two separate negotiable instruments deriving from a single transaction. The dual systems, it was said, had contributed to the economic development of developing countries, especially with regard to agricultural financing. It was emphasized that modern business practice evidenced that dual systems were not more prone to fraud than single systems.

94. It was clarified that the adoption of Chapter V was optional, and that the model law should not be implemented as to allow the coexistence of single and dual systems in the same jurisdiction. The Working Group agreed to retain Chapter V.

Article 31 – Issuance and form of a pledge bond

95. It was explained that Chapter V would apply only after the pledge bond was transferred separately from the warehouse receipt, at which time the holder would insert the amount secured by the pledge bond and the payment date. It was emphasized that the provisions in Chapter V would not apply so long as the warehouse receipt and the pledge bond would circulate jointly.

96. After discussion, the Working Group agreed to delete the words “For the purposes of this chapter,” to insert the words “, once detached” at the end of the chapeau, to replace the word “receipt” with “pledge bond” at the end of subparagraph 3(a), to delete the first set of bracketed text in paragraph 5 and retain the second set outside square brackets.

Article 33 – Transfers and other dealings

97. Noting that, in business practice, the holder did not always insert the information in the pledge bond directly, the Working Group agreed to add the words “ensure that” at the end of the chapeau of paragraph 2 and adjust subparagraphs (a) and (b) accordingly. It also agreed to delete the bracketed text in subparagraph 2(b).

Article 34 – Rights and obligations of the warehouse operator

98. The Working Group agreed to insert the words “all or part of” before “the goods” in paragraph 2 to reflect instances of delivery against split receipts, to retain outside square brackets the first set of bracketed text and to delete the second set of bracketed text in paragraph 3, and to delete paragraph 4.

Article 42 – Entry into force

99. The Working Group agreed to replace the bracketed text in paragraph 1 with the words “[on the date or according to a mechanism to be specified by the enacting State]” to accommodate the need to establish a registration system.

B. Draft guide to enactment of the model law on warehouse receipts

100. Recalling that it had already asked the secretariat to make a substantial number of changes to the draft guide to enactment to reflect its discussions of the draft model law, the Working Group approved most paragraphs of the draft guide without further change. The following changes were agreed:

(a) In paragraph 54, replace “warehouse receipts” in the first sentence with “their storage agreement”;

(b) Delete paragraphs 56 to 61;

- (c) In paragraph 55, replace the chapeau with language to the following effect: “If a country wishes to promote cross-border trading in warehouse receipts, it will need to take account of private international law issues. These could include the following:”;
- (d) In paragraph 69, add text near the start of the paragraph to note that the depositor was a party to the storage agreement;
- (e) In paragraph 73, delete the sentence: “Unlike the law of negotiable instruments generally, the MLWR does not create the presumption of negotiability.”;
- (f) In paragraph 90, expand the last sentence to refer also to missing or inaccurate statements, rather than just incomplete statements;
- (g) In paragraph 114, add a second sentence to summarize what it was that Chapter III did apply to;
- (h) In paragraph 127, add a sentence to explain that article 12, paragraph 2 was only relevant to States whose laws provide for a secured transactions registry;
- (i) In paragraph 142, insert “under the warehouse receipt” after “recourse” in the second sentence;
- (j) In paragraph 149, change “same nature” in the second sentence to “same quality”;
- (k) In paragraph 170, clarify the explanation of article 30, paragraph 3 by noting that the warehouse operator may only rely on the paragraph if it was not aware, when the goods were deposited with it, that the goods were hazardous;
- (l) In paragraph 185 of the Russian language version of the guide, insert the word “only” to reflect the corresponding change that the Working Group had agreed to make to article 34 in the Russian language version of the model law;
- (m) In paragraph 209, insert a sentence to note that a regulatory system for warehouse operators may in fact oblige them to issue warehouse receipts.
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