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**United Nations Commission on  
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## Draft model law on warehouse receipts

### Note by the Secretariat

1. At its fortieth session (Vienna, 25–29 September 2023), the Working Group considered a note by the secretariat containing background information on the warehouse receipts project, a summary of the preparatory work carried out by UNIDROIT and the secretariat on the private law aspects of the warehouse receipts and a draft model law on warehouse receipts ([A/CN.9/1152](#)).
2. The annex to this note contains an annotated revision of the draft model law, which has been prepared by the secretariat to incorporate the discussions and decisions of the Working Group at its fortieth session ([A/CN.9/1158](#)). The Working Group may wish to use the revised draft as a basis for its deliberations at its forty-first session. In cooperation with UNIDROIT, the secretariat has also prepared a draft guide to enactment of the model law for consideration by the Working Group, which will be issued separately ([A/CN.9/WG.I/WP.134](#)).

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\* Reissued for technical reasons.



## Annex

### Draft model law on warehouse receipts

#### Chapter I. Scope and general provisions

##### *Article 1. Scope of application*

1. This Law applies to warehouse receipts.
2. For the purposes of this Law, a warehouse receipt is an electronic record or [paper][non-electronic] document issued and signed by a warehouse operator by which the warehouse operator:
  - (a) Acknowledges holding the goods mentioned<sup>1</sup> in it on behalf of the holder; and
  - (b) Promises to deliver the goods to the holder.

##### *Article 2. Definitions*

For the purposes of this Law:

1. “Depositor” means a person who deposits goods for storage with a warehouse operator.
2. “Electronic record” means information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.
3. “Holder” of a warehouse receipt means:
  - (a) In the case of an electronic negotiable warehouse receipt that is issued to the order of a named person – that person, or the most recent endorsee, if in control of the receipt;
  - (b) In the case of an electronic negotiable warehouse receipt that is issued to bearer or endorsed in blank – the person in control of the receipt;
  - (c) In the case of a non-negotiable electronic warehouse receipt – the person to whom delivery of the goods is to be made in accordance with the terms of the receipt;<sup>2</sup>
  - (d) In the case of a [paper][non-electronic] negotiable warehouse receipt that is issued to the order of a named person – that person, or the most recent endorsee, if in possession of the receipt;
  - (e) In the case of a [paper][non-electronic] negotiable warehouse receipt that is issued to bearer or endorsed in blank – the person in possession of the receipt; and
  - (f) In the case of a non-negotiable warehouse receipt – the person to whom delivery of the goods is to be made in accordance with the terms of the receipt.
4. “Negotiable warehouse receipt” means a warehouse receipt that is issued:
  - (a) To the order of a named person; or
  - (b) To bearer.

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<sup>1</sup> The word “described” has been replaced with “mentioned” as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 46).

<sup>2</sup> Additional definitions of “holder” have been introduced to reflect that, under both the functional equivalence approach and the medium neutral approach, the holder of an electronic warehouse receipt is in the same position as the holder of a paper (or non-electronic) warehouse receipt.

5. “Non-negotiable warehouse receipt” means a warehouse receipt that is issued in favour of a named person only.<sup>3</sup>
6. “Protected holder” means a person that satisfies the requirements of article 17, paragraph 1.
7. “Storage agreement” means an agreement between a warehouse operator and a depositor that sets out the terms on which the warehouse operator agrees to store goods.
8. “Warehouse operator” means a person who is in the business of storing goods for other persons.<sup>4</sup>

### *Article 3. Form of warehouse receipts*

A warehouse receipt may be issued in [paper][non-electronic] or electronic form.<sup>5</sup>

### *Article 4. Party autonomy*

#### *Option 1*

Parties may not derogate from or vary by agreement any provision of this Law.

#### *Option 2*

1. Parties may derogate from or vary by agreement the following provisions of this Law: [...].
2. Such an agreement does not affect the rights of any person who is not a party to that agreement.

### *Article 5. Interpretation*

In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application.

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

### *Article 6. Obligation to issue a warehouse receipt*

1. A warehouse operator shall issue a warehouse receipt in relation to goods deposited, after taking possession of them, if requested by the depositor.<sup>6</sup>
2. The lack of issuance of a warehouse receipt by the warehouse operator does not affect the validity of the storage agreement.

<sup>3</sup> “Only” added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 25).

<sup>4</sup> Words “for reward” deleted as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 28).

<sup>5</sup> Draft article 3 contains a statement on the possibility to issue warehouse receipts in paper and electronic form on an equal footing, thus implementing a medium-neutral approach. The use of the disjunctive “or” implies a prohibition of issuing warehouse receipts in mixed medium (i.e., partly on paper and partly in electronic form). If the Working Group decides to adopt a functional equivalence approach, a general rule on recognition may be inserted (see draft article 35, paragraph 1) and this provision may not be needed.

<sup>6</sup> Word “deposited” added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 33), with minor consequential drafting adjustments.

*Article 6 bis. Electronic warehouse receipt<sup>7</sup>*

1. An electronic warehouse receipt is issued if a reliable method is used:
  - (a) To identify the electronic warehouse receipt;
  - (b) To render that electronic warehouse receipt capable of being subject to control from its creation until it ceases to have any effect or validity; and
  - (c) To retain the integrity of that electronic warehouse receipt.
2. The criterion for assessing integrity shall be whether information contained in the electronic warehouse receipt, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.

*Article 7. Representations by the depositor*

The depositor represents to the warehouse operator, at the time of deposit, that:

- (a) It has the authority to deposit the goods and to request the issuance of a negotiable warehouse receipt; and
- (b) The goods are free of any rights or claims of third parties except as notified to the warehouse operator.<sup>8</sup>

*Article 8. Incorporation of storage agreement in the warehouse receipt<sup>9</sup>*

1. A warehouse receipt, by operation of this Law, includes all terms of the storage agreement.
2. The express terms of the warehouse receipt prevail over any inconsistent term of the storage agreement.<sup>10</sup>

<sup>7</sup> Further to the request of the Working Group to prepare provisions on the use of electronic warehouse receipts based on the functional equivalence approach and the medium neutral approach (see [A/CN.9/1158](#), para. 16), this draft article sets forth the requirements for issuing an electronic warehouse receipt under a medium neutral approach. It is based on article 10 MLETR and is complemented by draft article 15, paragraph 3, on the notion of “control”. The information requirements set forth in draft article 9 of the model law apply to both electronic and paper (or non-electronic) warehouse receipts.

The Act to Establish a Legal Framework for Information Technology of the province of Québec, Canada (Chapter C-1.1) offers an example of medium-neutral legislation.

It is assumed that provisions on writing, signature and endorsement are not needed under a medium-neutral approach, while they are under a functional equivalence approach (see draft articles 37–39). The Working Group may wish to discuss whether the general law on electronic transactions of the enacting jurisdiction may provide guidance on those notions.

<sup>8</sup> Words “and to request the issue of a negotiable warehouse receipt” added in subparagraph (a) and words “notified to” substituted for “agreed by” in subparagraph (b), as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 36).

<sup>9</sup> Redrafted as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 38).

<sup>10</sup> The Working Group may wish to consider distinguishing between the relations between the warehouse operator and the depositor, which are contractual in nature, and the relations between the warehouse operator and the holder, which derive from statute. Arguably, the protection provided under this article could be limited to only the latter situation, in which case paragraph 2 could read along the following lines: “Notwithstanding paragraph 1, the warehouse operator may not invoke against any person who becomes a holder under articles 15 or 16 any term of the storage agreement that is inconsistent with the express terms of the warehouse receipt”.

*Article 9. Information to be included in a warehouse receipt*

1. A warehouse operator shall<sup>11</sup> include the following information in a warehouse receipt:<sup>12</sup>

- (a) The words “warehouse receipt”;<sup>13</sup>
- (b) If it is negotiable, the name of the person to whose order the receipt is issued or a statement that it is issued to bearer;
- (c) If it is non-negotiable, the name of the person in whose favour it is issued;
- (d) The name and address of the depositor;
- (e) The name and address of the warehouse operator;
- (f) A description of the goods and their quantity;
- (g) The existence of any rights of third parties to the goods notified by the depositor to the warehouse operator pursuant to article 7, subparagraph (b);<sup>14</sup>
- (h) The fixed period of the storage, if any;
- (i) The place where the goods are stored;
- (j) A unique [identification number] [identifier]<sup>15</sup> for the receipt;
- (k) The date and place of issuance; and
- (l) The date of the storage agreement and a statement that a copy of the storage agreement shall be made available on request by the current holder to potential transferees.

2. An incomplete or incorrect statement of information required by paragraph 1 does not affect the validity of the warehouse receipt provided that it nevertheless meets the requirements set out in paragraph 2 of article 1 [and of paragraphs 4 or 5 of article 2],<sup>16</sup> but the warehouse operator is not relieved from any liability that it would have under other law to any person as a result of the statement being incomplete or incorrect.<sup>17</sup>

3. If a warehouse receipt does not include the information required by paragraph 1, subparagraph (b) or (c), it is presumed to be a negotiable warehouse receipt that is issued to bearer.<sup>18</sup>

<sup>11</sup> For editorial consistency, the words “must” and “will” have been replaced with “shall” throughout the text of the draft model law.

<sup>12</sup> Subparagraphs (a) and (b) of the previous version have been deleted and minor amendments made to the remaining subparagraphs as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 39).

<sup>13</sup> Subparagraph (a) has been added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 44).

<sup>14</sup> New subparagraph added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 36).

<sup>15</sup> The Working Group may wish to consider whether reference to “identifier” rather than to “identification number” would be preferable to capture different manners of uniquely identifying warehouse receipts, including those in electronic form.

<sup>16</sup> New clause added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 45).

<sup>17</sup> New clause added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 48).

<sup>18</sup> Additional language added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 49).

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

1. A warehouse operator may also include any other information in a warehouse receipt, such as:

- (a) The name of the insurer, if any, who has insured the goods, the details of the insurance policy covering the goods and the insured value;<sup>19</sup>
- (b) The amount of the storage fees if they are a fixed amount or, if they are not a fixed amount, how the fees are calculated;
- (c) The quality of the goods; or
- (d) If the goods are fungible, whether the goods may be commingled.

2. An incorrect statement of information referred to in paragraph 1 does not affect the validity of the warehouse receipt provided that it nevertheless meets the requirements set out in paragraph 2 of article 1 [and of paragraphs 4 or 5 of article 2],<sup>20</sup> but the warehouse operator is not relieved from any liability that it would have under other law to any person as a result of the statement being incorrect.

3. If a warehouse receipt covers fungible goods but does not state the quality of the goods, the goods are presumed to be of average quality.

[4. Nothing in this Law precludes the inclusion of information in an electronic warehouse receipt in addition to that contained in a [paper][non-electronic] warehouse receipt.]<sup>21</sup>

*Article 11. Goods in sealed packages and similar situations*

1. If the warehouse operator has no practicable or commercially reasonable means of inspecting the goods or otherwise verifying the information provided by the depositor, the warehouse operator may describe the goods, including their type, quantity and quality:

(a) In accordance with information provided to it by the depositor, by a statement to that effect in the warehouse receipt; or<sup>22</sup>

(b) In the case of goods in a sealed package, by a statement to the effect that the package is said to contain the described goods, and that the warehouse operator otherwise has no knowledge of the contents or condition of the contents of the package.

2. A warehouse operator who describes goods in accordance with paragraph 1 shall not be liable for any losses suffered by any person as a result of the description being incomplete or incorrect, unless the warehouse operator knew or had reasonable grounds to believe that the description was incomplete or incorrect.<sup>23</sup>

<sup>19</sup> Subparagraph expanded as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 50).

<sup>20</sup> Paragraph 2 amended to align it with the new wording of article 9, paragraph 2, as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 53).

<sup>21</sup> Paragraph 4 aims to clarify that an electronic warehouse receipt may contain, because of its nature, additional information that cannot be written – or easily written – in a paper warehouse receipt. This could be, for instance, information generated by oracles and incorporated in the receipt at regular times, such as the temperature of a container storing goods covered by the receipt. The paragraph is based on article 6 of the UNCITRAL Model Law on Electronic Transferable Records (MLETR).

<sup>22</sup> Amendments requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 57).

<sup>23</sup> The words “false or misleading” have been replaced with “incomplete or incorrect” and a qualification of the cause of liability inserted as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 59).

*Article 12. Alteration of a warehouse receipt*

1. The warehouse operator is not bound by changes made to the warehouse receipt without its authorization.<sup>24</sup>
2. Notwithstanding paragraph 1, if a field in a negotiable warehouse receipt is left blank by the warehouse operator and is later filled in without the warehouse operator's authorization, the insertion shall be effective as against the warehouse operator if a subsequent holder has no knowledge of the lack of authorization at the time that person becomes the holder.

*Article 13. Loss or destruction of a warehouse receipt*

1. In the event of the loss or destruction of a warehouse receipt, the holder at the time of loss or destruction may require the warehouse operator to issue a replacement warehouse receipt subject to reasonable requirements that the warehouse operator may establish as regards:
  - (a) Adequate proof of the loss or destruction of the warehouse receipt;<sup>25</sup>
  - (b) Proof of the holder's entitlement to the warehouse receipt; and
  - (c) An appropriate indemnity in relation to the issuance of the replacement warehouse receipt, and security in support of that indemnity.
2. In the case of an electronic warehouse receipt:
  - (a) "Loss" in paragraph 1 means loss of control, including lack of compliance with the requirements set in articles [6 bis and 15, paragraph 3][35 and 36];<sup>26</sup> and
  - (b) "Issue a replacement warehouse receipt" in paragraph 1 may include reinstatement of control of the warehouse receipt over which control has been lost.
3. If a warehouse operator fails to issue a replacement warehouse receipt pursuant to paragraph 1, the holder at the time of loss or destruction may apply to the court for an order that the warehouse operator issue a replacement warehouse receipt, including by way of proceedings in the form of [*the enacting State specifies the appropriate expeditious proceedings*]. In the case of a lost negotiable warehouse receipt, the applicant shall deposit with the court adequate security to indemnify the warehouse operator against claims by a holder of the lost warehouse receipt.
4. A replacement warehouse receipt issued under this article shall state that it is a replacement warehouse receipt and shall cancel and supersede the warehouse receipt believed to have been lost or destroyed.
5. Only the replacement warehouse receipt issued in accordance with paragraph 4 entitles the holder to claim delivery of the goods under article 26, but a person who, in good faith, acquires the warehouse receipt believed to have been lost or destroyed retains any right to claim damages from a previous holder that may be available under other laws.<sup>27</sup>

<sup>24</sup> Additional paragraph added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 62). As the other paragraph in draft article 12 contains an exception to this general rule, the secretariat suggests this paragraphs' order.

<sup>25</sup> Qualification added as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 63). Editorial changes to the structure of the paragraph were made to comply with the usual drafting style of UNCITRAL texts.

<sup>26</sup> The added language in draft subparagraph 2(a) indicates that the notion of loss of an electronic warehouse receipt includes loss of any essential elements for its validity. The first set of bracketed articles applies in case the medium-neutral approach is chosen, while the second set applies in case the functional equivalence approach is chosen.

<sup>27</sup> Additional clause in paragraph 4 and new rules on delivery and damages claims of good faith purchases inserted to reflect the discussion at the fortieth session of the Working Group (see [A/CN.9/1158](#), para. 64).

*Article 14. Change of medium of a warehouse receipt*

1. If the holder of a warehouse receipt so requests, a warehouse operator may change the medium of the warehouse receipt from [paper][non-electronic] to electronic or from electronic to [paper][non-electronic].
2. At the time of the change of medium, the warehouse operator shall ensure that the warehouse receipt can no longer be used in its previous medium.
3. The change of medium does not affect the rights and obligations of the parties.

### **Chapter III. Transfers and other dealings in negotiable warehouse receipts**

*Article 15. Transfer of a negotiable warehouse receipt*

1. A [paper][non-electronic] negotiable warehouse receipt may be transferred:
  - (a) By endorsement and delivery, if it is issued or endorsed to the order of the person transferring it; or
  - (b) By delivery, if:
    - (i) It is issued to bearer; or
    - (ii) It is endorsed in blank or to bearer.
2. An electronic negotiable warehouse receipt may be transferred:
  - (a) By endorsement and transfer of control, if it is issued or endorsed to the order of the person transferring it; or
  - (b) By transfer of control, if:
    - (i) It is issued to bearer; or
    - (ii) It is endorsed in blank or to bearer.<sup>28</sup>
3. For the purposes of paragraph 2, an electronic warehouse receipt is subject to control<sup>29</sup> if a reliable method is used:
  - (a) To establish exclusive control of that electronic warehouse receipt by a person;
  - (b) To identify that person as the person in control; and
  - (c) To transfer control over the electronic warehouse receipt.

*Article 15 bis. General reliability standard for electronic warehouse receipts<sup>30</sup>*

For the purposes of articles 6 bis and 15, paragraph 3, the method referred to shall be:

- (a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in light of all relevant circumstances, which may include:

<sup>28</sup> Draft paragraph 2 aims to implement the medium-neutral approach. Under a functional equivalence approach, this provision may not be necessary in light of article 35, paragraph 2 of the draft model law.

<sup>29</sup> Draft paragraph 3 sets forth the requirements for control of an electronic warehouse receipt under a medium neutral approach. It is based on article 11 MLETR.

<sup>30</sup> The draft article provides a non-exhaustive list of circumstances relevant to determine the reliability of the method used in managing electronic warehouse receipts. It is based on article 12 MLETR. It applies under both the functional equivalence approach and the medium neutral approach. The article does not prevent the enacting jurisdiction from adopting mechanisms to assess the reliability of methods and systems before their use (ex-ante approach) and to associate legal consequences to that assessment (e.g. legal presumptions). The Working Group may wish to consider if a reference to any agreement of the parties should be added to the list, at least with regard to the effects between those parties.



- (i) Any operational rules relevant to the assessment of reliability;
  - (ii) The assurance of data integrity;
  - (iii) The ability to prevent unauthorized access to and use of the system;
  - (iv) The security of hardware and software;
  - (v) The regularity and extent of audit by an independent body;
  - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
  - (vii) Any applicable industry standard; or
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.

*Article 16. Rights of a transferee generally*

1. A person to whom a negotiable warehouse receipt has been transferred acquires:
  - (a) The benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt; and
  - (b) Such rights to the receipt and the goods as the transferor was able to convey.<sup>31</sup>
2. Paragraph 1 does not limit the rights of a protected holder of a negotiable warehouse receipt pursuant to article 18.

*Article 17. Protected holder of a negotiable warehouse receipt*

1. A person is a protected holder of a negotiable warehouse receipt if:
  - (a) The receipt has been transferred to the person pursuant to article 15;
  - (b) The person acted in good faith<sup>32</sup> and without knowledge of any claim to the receipt or the goods covered by it, or of any defence on the part of any person other than the warehouse operator; and
  - (c) The transfer was in the ordinary course of business or financing.
2. A person does not have knowledge of a claim to a warehouse receipt or the goods covered by it for the purposes of paragraph 1(b) merely because information relating to that claim has been registered in [*the enacting State specifies the appropriate registry established pursuant to a secured transactions law*].
3. If a negotiable warehouse receipt is issued by a warehouse operator to the order of a named person other than the depositor, the issuance of the receipt to that person by the warehouse operator has the same effect, for the purposes of determining whether that person is a protected holder, as if the receipt had been transferred to that person pursuant to article 15.

*Article 18. Rights of a protected holder of a negotiable warehouse receipt*<sup>33</sup>

*Option 1*

1. A protected holder of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt, and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance

<sup>31</sup> Editorial changes to the structure of the paragraph were made to comply with the usual drafting style of UNCITRAL texts.

<sup>32</sup> The Working Group may wish to clarify whether the notion of “good faith” referred to in article 17 is a uniform law notion or a notion defined in the domestic law of the enacting jurisdiction.

<sup>33</sup> Alternative options to paragraph 1 provided to reflect the discussion at the fortieth session of the Working Group (see [A/CN.9/1158](#), paras. 71–73).

with the terms of the receipt, free of any claim or defence of the warehouse operator or any other person, other than any claim or defence that arises under the terms of the receipt or under this Law.

#### *Option 2*

1. A protected holder of a negotiable warehouse receipt acquires, free of any claim or defence of the warehouse operator or any other person, other than any claim or defence that arises under the terms of the receipt or under this Law:
  - (a) Ownership of the receipt and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt; and
  - (b) Such property rights to the goods as it would acquire by the transfer of physical possession of the goods.
2. Paragraph 1 applies even if:
  - (a) The transfer to the protected holder or any prior transfer constituted a breach of duty by the transferor;
  - (b) A previous holder of the receipt lost control or possession of the receipt as a result of fraud, duress, theft, misappropriation, misrepresentation, mistake, accident or similar circumstances; or
  - (c) The goods or the receipt had been previously sold, transferred or encumbered to a third person.
3. The rights of a protected holder of a negotiable warehouse receipt under paragraph 1 are not subject to [*the enacting State specifies any retention-of-title, security or equivalent right*] that any person may have in or in relation to the goods covered by the receipt.
4. The rights of a protected holder of a negotiable warehouse receipt under paragraph 1 are not subject to any right pursuant to a judgment against any person other than the protected holder. The warehouse operator is not obliged to deliver the goods to a person claiming pursuant to such a judgment, unless the warehouse receipt is surrendered to it.

#### *Article 19. Third-party effectiveness of a security right*

A security right in a negotiable warehouse receipt may be granted and made effective against third parties by:

- (a) [Registration in a registry established pursuant to [*the enacting State specifies its secured transactions law providing for such registry*];]
- (b) In the case of an electronic negotiable warehouse receipt, the secured creditor taking control of the receipt; or
- (c) In the case of a [paper][non-electronic] negotiable warehouse receipt, the secured creditor taking possession of the receipt.

#### *Article 20. Representations by a transferor of a negotiable warehouse receipt*

A transferor of a negotiable warehouse receipt represents to the transferee that:

- (a) The receipt is authentic; and
- (b) The transferor does not know of any fact that would impair the validity of the receipt, the value of the goods covered by the receipt, or the effectiveness of the transfer of ownership of the receipt and the goods it covers, except as notified to the transferee.<sup>34</sup>

<sup>34</sup> Amendments requested by the Working Group (see [A/CN.9/1158](#), para. 78).

*Article 21. Limited representation by intermediaries*

Notwithstanding article 20, an intermediary that is entrusted with warehouse receipts on behalf of another person or with collection of a negotiable instrument or other claim, may exercise all rights arising out of the receipt, but [can only transfer it as an agent][represents by the transfer of a negotiable warehouse receipt only that it is authorized to do so].<sup>35</sup>

*Article 22. Transferor not a guarantor*

A person who transfers a negotiable warehouse receipt does not guarantee, by virtue of the transfer, the performance by the warehouse operator of any obligations evidenced by the receipt.<sup>36</sup>

## **Chapter IV. Rights and obligations of the warehouse operator**

*Article 23. Duty of care*

1. The warehouse operator shall store and preserve the goods in accordance with the level of care expected of a diligent and competent operator in that particular trade.
2. The warehouse operator may vary its obligation under paragraph 1 by the terms of both the storage agreement and of the warehouse receipt. However, the warehouse operator may not exclude or limit liability for fraud, wilful misconduct, gross negligence, or misappropriation of the goods.

*Article 24. Duty to keep goods separate*

1. Subject to paragraph 2, the warehouse operator shall keep the goods separate so as to permit identification of the goods at any time.
2. The warehouse operator may commingle fungible goods into a mass of goods of the same type and quality, to the extent permitted by<sup>37</sup> the warehouse receipt and the storage agreement.<sup>38</sup>

*Article 25. Lien of the warehouse operator*

1. The warehouse operator has a lien on the goods and in any proceeds for:
  - (a) Charges for storage of the goods;
  - (b) Unexpected expenses reasonably<sup>39</sup> necessary for the preservation of the goods;
  - (c) Expenses reasonably incurred in the sale of the goods in accordance with paragraph 4; and
  - (d) Similar charges or expenses owed by the holder in relation to other goods held by the warehouse operator, if so stated in the warehouse receipt.
2. Subject to paragraph 3, the warehouse operator's lien is effective against third parties.
3. As against a protected holder, the lien is limited to:

<sup>35</sup> Draft article amended to reflect the discussion at the fortieth session of the Working Group (see [A/CN.9/1158](#), para. 79).

<sup>36</sup> Amendments requested by the Working Group (see [A/CN.9/1158](#), para. 80).

<sup>37</sup> Paragraph amended as requested by the Working Group at its fortieth session (see [A/CN.9/1158](#), para. 52).

<sup>38</sup> Reference to the storage agreement added as requested by the Working Group (see [A/CN.9/1158](#), para. 83).

<sup>39</sup> Qualification added as requested by the Working Group (see [A/CN.9/1158](#), para. 84).

- (a) Charges and expenses specified on the face of the receipt; or
  - (b) If no charges or expenses are so specified, a reasonable charge for storage after the date of issuance of the receipt.
4. The warehouse operator may enforce its lien as permitted by [*relevant other law as specified by the enacting State*].

*Article 26. Obligation of warehouse operator to deliver*

1. Except as provided in article 29, the warehouse operator shall deliver the goods as instructed by the holder of the warehouse receipt if the holder:<sup>40</sup>
- (a) Provides the warehouse operator with an instruction to deliver the goods;<sup>41</sup>
  - (b) Surrenders possession or control of the warehouse receipt to the warehouse operator; and
  - (c) Pays any outstanding amounts owed to the warehouse operator in respect of any of the charges or expenses referred to in article 25, paragraph 1 or, in the case of a protected holder, those referred to in article 25, paragraph 3.
2. Upon delivery of the goods, the warehouse operator shall cancel the warehouse receipt.

*Article 27. Partial delivery*

1. Except as provided in article 29, the warehouse operator shall deliver part of the goods to the holder of the warehouse receipt if the holder:
- (a) Provides the warehouse operator with an instruction as to the delivery of the goods;<sup>42</sup>
  - (b) Surrenders possession or control of the warehouse receipt; and
  - (c) Pays a corresponding proportion of any outstanding amounts owed to the warehouse operator in respect of any of the charges or expenses referred to in article 25, paragraph 1 or, in the case of a protected holder, those referred to in article 25, paragraph 3.
2. Upon partial delivery of the goods, the warehouse operator shall note the partial delivery on the warehouse receipt and return possession or control of the receipt to the holder.

*Article 28. Split warehouse receipt*

If requested by the holder of a warehouse receipt, a warehouse operator shall split the warehouse receipt into two or more warehouse receipts that cover in total the goods that were covered by the original warehouse receipt, upon surrender of possession or control of the original warehouse receipt and payment of any additional cost reasonably incurred by the warehouse operator as a consequence of the split and reissuance of the warehouse receipt where such possibility was not covered by the storage agreement.<sup>43</sup>

*Article 29. Excuses from delivery obligation*

The warehouse operator is relieved of its obligation to deliver the goods if and to the extent it establishes any of the following:

<sup>40</sup> Paragraph amended to accommodate the possibility that the holder could instruct to deliver to a third party (see also footnote 42).

<sup>41</sup> Subparagraph amended to accommodate the possibility that the holder could instruct to deliver to a third party.

<sup>42</sup> Paragraph amended as requested by the Working Group at its fortieth session (see A/CN.9/1158, para. 85).

<sup>43</sup> Final clause added as requested by the Working Group (see A/CN.9/1158, para. 87).

- (a) Destruction or loss of the goods for which the warehouse operator is not liable;
- (b) That it has sold or otherwise disposed of the goods in enforcement of its lien pursuant to article 25, paragraph 4, or to article 30;
- (c) That it has received competing claims to the goods and the matter has yet to be resolved; or
- (d) That it is prevented from doing so by court order or otherwise by circumstances beyond its control.

*Article 30. Termination of storage by the warehouse operator*<sup>44</sup>

1. The warehouse operator, by giving notice to all persons known to the warehouse operator to claim an interest in the goods, may:
  - (a) Demand payment of the amounts owed to it and removal of the goods by the end of the storage period specified in the warehouse receipt or, if the storage period has expired, or no storage period is specified in the warehouse receipt, within a reasonable period [not less than ... days [*the enacting State specifies a certain period*]]<sup>45</sup> after the warehouse operator gives notice, as specified in the notice; and
  - (b) Reserve the right, if the amounts are not paid and the goods not removed by the date or within the period specified in the notice, to sell the goods afterwards by public or private sale, in any commercially reasonable manner.
2. If the warehouse operator does not know of any person claiming an interest in the goods, the notice required by paragraph 1 may be given by public advertisement pursuant to [*relevant other law as specified by the enacting State*].
3. If, as a result of a quality or condition of the goods of which the warehouse operator did not have knowledge at the time of deposit, the goods are a hazard, the warehouse operator may dispose of the goods in any lawful manner.

## [Chapter V. Pledge bonds]

*Article 31. Issuance and form of a pledge bond*

1. For the purposes of this chapter, the warehouse operator shall issue a pledge bond as a [paper][non-electronic] document signed by the warehouse operator that is associated with, but detachable from, the warehouse receipt [or as an electronic record capable of being controlled separately from the electronic warehouse receipt]<sup>46</sup> which:
  - (a) Represents the holder's right to payment of the amount stated in the pledge bond;<sup>47</sup> and

<sup>44</sup> Former paragraphs 1 and 2 have been combined, as requested by the Working Group (see [A/CN.9/1158](#), para. 89).

<sup>45</sup> At its fortieth session, the Working Group agreed that the guide to enactment should discuss "the length of a reasonable notice (e.g. 30 days)" (see [A/CN.9/1158](#), para. 89). An alternative solution to provide greater clarity, as wished by some delegations at that session, may be to provide the enacting State with the possibility of expressly stating a period, as is done in several domestic laws (see, for example, Brazil, Decreto No. 1.102, Article 10, § 1 (eight days); United States, Uniform Commercial Code, Section 7-206 (30 days)).

<sup>46</sup> Amended to incorporate into this article the essential elements of the former article 33, as envisaged by the Working Group, and to clarify the relationship between warehouse receipt and pledge bond (see [A/CN.9/1158](#), paras. 91 and 93). The provisions relating to electronic warehouse receipts apply also to pledge bonds. In that regard, it should be noted that the use of pledge bonds in electronic form may greatly simplify their practical handling and at the same time facilitate extracting additional value from the goods. Accordingly, the introduction of legislation that enables the use of pledge bonds in electronic form may significantly promote their use and, more generally, access to financing.

<sup>47</sup> When considering chapter V of the draft model law, at its fortieth session, the Working Group

(b) Grants the holder of the pledge bond a possessory security right in the goods covered by the warehouse receipt.

2. The pledge bond and the warehouse receipt shall each be identified as pledge bond and warehouse receipt, respectively, and contain the same information.<sup>48</sup>

3. For the purposes of this chapter, “holder” of a pledge bond means:

(a) In the case of an electronic pledge bond that is issued to the order of a named person – that person, or the most recent endorsee, if in control of the receipt;

(b) In the case of an electronic pledge bond that is issued to bearer or endorsed in blank – the person in control of the pledge bond;

(c) In the case of a [paper][non-electronic] pledge bond that is issued to the order of a named person, that person, or the most recent endorsee, if in possession of the pledge bond; and

(d) In the case of a [paper][non-electronic] pledge bond that is issued to bearer or endorsed in blank, the person in possession of the pledge bond.

4. This chapter governs the effects of the pledge bond once transferred separately from the warehouse receipt.

5. [Except as otherwise provided in this chapter the provisions of chapters I to IV] [Articles 3 and 6 to 14 with the exception of article 9, paragraph 1, subparagraph (a)] apply in relation to pledge bonds in the same way as they apply to warehouse receipts.<sup>49</sup>

#### *Article 32. Effect of a pledge bond*

1. The rights of the holder of the warehouse receipt to goods are subject to the rights of the holder of the pledge bond.

2. The holder of the warehouse receipt may pay the amounts secured by the pledge bond to its holder whether or not the amount is yet due, in which case the holder of the pledge bond shall then surrender the pledge bond to the holder of the warehouse receipt.

3. If there has been default in payment of the amount secured by a pledge bond, the holder of the pledge bond can enforce its security right over the goods pursuant to [relevant other law as specified by the enacting State].

#### *Article 33. Transfers and other dealings*

1. A pledge bond may be transferred together with the warehouse receipt, or separately. When transferred separately from the warehouse receipt, the pledge bond only transfers the rights referred to in article 31, paragraph 1, subparagraphs (a) and (b).<sup>50</sup>

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noted a lack of “sufficient understanding at this stage regarding how a dual system functioned, and how it might produce outcomes that could not be achieved by a single system” (see [A/CN.9/1158](#), para. 90). The Working Group may wish to consider whether the particular financing function of the pledge bond, as distinct from the trading function of the warehouse receipt, might be emphasized by referring expressly to the nature of the pledge bond as a negotiable instrument representing a monetary obligation, as can be found in the laws of various countries that provide for a dual system, either expressly or through a reference to the underlying loan (see Argentina, Ley 9643, article 3; Brazil, Lei No. 11.076, Article 1, § 27; Chile, Ley 18.690, Article 7; Colombia, Ley 20 de 1921, Article 13; Spain, Real Decreto de 22 de septiembre de 1917, Article 23; Uruguay, Ley No. 17.781, Article 3).

<sup>48</sup> Amended to reflect the discussion by the Working Group (see [A/CN.9/1158](#), para. 92).

<sup>49</sup> If the Working Group chooses the first alternative, there would be no need for article 33, paragraph 3 and article 34, paragraph 4.

<sup>50</sup> At its fortieth session, the Working Group requested the secretariat to consider the application of the provisions of chapters I to IV to pledge bonds (see [A/CN.9/1158](#), para. 93). The additional sentence added to this paragraph is intended to clarify that the holder of a pledge bond will

2. The first holder of a pledge bond to transfer it separately from the warehouse receipt shall:

(a) Insert in the pledge bond the amount secured by the pledge bond and the due date for payment; and

(b) Transcribe such information into the warehouse receipt and provide a copy of the completed warehouse receipt to the warehouse operator [and the custodian of the electronic warehouse receipt and pledge bond].<sup>51</sup>

[3. Articles 15 to 18 and 20 to 22 apply to pledge bonds in the same way as they apply to warehouse receipts.]<sup>52</sup>

*Article 34. Rights and obligations of the warehouse operator*

1. If the pledge bond has been transferred separately from the warehouse receipt pursuant to article 33, paragraph 1, the warehouse operator shall only split the warehouse receipt in accordance with article 28 if requested by the holder of both the warehouse receipt and the pledge bond.

2. Prior to the due date for payment of the amount secured by the pledge bond, the warehouse operator may only deliver the goods upon presentation of both the warehouse receipt and the pledge bond.

3. After the due date for payment of the amount secured by the pledge bond, the warehouse operator shall deliver the goods [upon presentation of the pledge bond whether or not the warehouse receipt is also surrendered] [or] [as required by the holder of the pledge bond pursuant to its procedure for enforcing the pledge bond].

[4. Subject to paragraphs 1, 2 and 3, articles 23 to 30 apply to pledge bonds in the same way as they apply to warehouse receipts].

## **[Chapter VI. Electronic warehouse receipts.]<sup>53</sup>**

*Article 35. Electronic warehouse receipt<sup>54</sup>*

1. An electronic warehouse receipt shall not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form.<sup>55</sup>

neither directly nor by implication acquire a proprietary interest in the goods.

<sup>51</sup> At the fortieth session of the Working Group it was noted that the language in paragraph 2 was perhaps too limiting. The secretariat has revised the text to extend the obligation to insert information on the amount payable also to the warehouse receipt and the warehouse operators. This reflects corresponding requirements in the laws of countries that provide for a dual system. The rationale for such a requirement is to make the holder of a warehouse receipt that circulates separately from a pledge bond aware of the amount that the holder is required to pay in order to claim delivery of the goods from the warehouse operator (see Argentina, Ley 9643, article 11; Brazil, Decreto No. 1.102, Article 19 and Lei No. 11.076, Article 17; Chile, Ley 18.690, Articles 8 and 9; Colombia, Ley 20 de 1921, Article 11; France, Code de commerce, Article L522-29; Italy, Codice civile, Article 1794; Peru, Ley No. 2763, Article 14; Portugal, Código Comercial, Article 412; Spain, Real Decreto de 22 de septiembre de 1917, Article 21; Uruguay, Ley No. 17.781, Article 9).

<sup>52</sup> At its fortieth session, the Working Group requested the secretariat to consider the application of the provisions of chapters I to IV to pledge bonds (see [A/CN.9/1158](#), para. 93). Paragraph 4 has been revised to exclude the application of Article 19, since third party effectiveness, in the case of a pledge bond, derives automatically from article 31 and does not require the possession or control of the warehouse receipt. The Working Group may wish to consider whether rules along the lines of article 19 should be included in this chapter (possibly in Article 32, or by adding words such as “effective against third parties” in article 31, subparagraph 1(b)).

<sup>53</sup> This chapter implements the request of the Working Group to prepare provisions on the use of electronic warehouse receipts based on the medium neutral approach ([A/CN.9/1158](#), para. 16).

<sup>54</sup> This article sets forth the requirements for achieving functional equivalence between paper and electronic warehouse receipts. It is based on article 10 MLETR.

<sup>55</sup> Paragraph 1 states the principle of the legal recognition of the effects of electronic warehouse receipts, also known as principle of non-discrimination against the use of electronic warehouse



2. For the purposes of article 1, the requirement to use a [paper][non-electronic] warehouse receipt is met by an electronic warehouse receipt if:

(a) The electronic warehouse receipt contains the information required in article 9; and

(b) A reliable method is used:

(i) To identify the electronic warehouse receipt;

(ii) To render that electronic warehouse receipt capable of being subject to control from its creation until it ceases to have any effect or validity; and

(iii) To retain the integrity of that electronic warehouse receipt.

2. The criterion for assessing integrity shall be whether information contained in the electronic warehouse receipt, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.

#### *Article 36. Control*<sup>56</sup>

1. For the purposes of articles 6, 15, 31 and 33, the requirement of possession of a [paper][non-electronic] warehouse receipt is met with respect to an electronic warehouse receipt if a reliable method is used:

(a) To establish exclusive control of that electronic warehouse receipt by a person; and

(b) To identify that person as the person in control.

2. For the purposes of articles 15 and 33, the requirement of delivery of a [paper][non-electronic] warehouse receipt is met with respect to an electronic warehouse receipt through the transfer of control over the electronic warehouse receipt.

#### *Article 37. Writing*<sup>57</sup>

For the purposes of articles 1, 9, 10, 11, 12, 15, 31 and 33, the requirement that information should be in writing<sup>58</sup> is met with respect to an electronic warehouse receipt if the information contained therein is accessible so as to be usable for subsequent reference.

#### *Article 38. Signature*<sup>59</sup>

For the purposes of articles 1, 15, 31 and 33, the requirement that information should be signed by a person is met by an electronic warehouse receipt if a reliable

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receipts. This is one of the fundamental principles underlying UNCITRAL texts on electronic commerce (see, e.g. art. 5 of the UNCITRAL Model Law on Electronic Commerce – MLEC). This provision is intended for insertion in case the Working Group decides to adopt a functional equivalence approach. Paragraphs 2 and 3 set forth the requirements for achieving functional equivalence between an electronic warehouse receipt and a paper (or non-electronic) warehouse receipt.

<sup>56</sup> This article sets forth the requirements for achieving functional equivalence between control of an electronic warehouse receipt and possession of a paper warehouse receipt. It is based on article 11 MLETR.

<sup>57</sup> This article sets forth the requirements for achieving functional equivalence between information contained in an electronic warehouse receipt and the form requirement of writing. It is based on article 6, paragraph 1 MLEC. The enactment of this article may be omitted if the enacting jurisdictions has adopted legislation on electronic transactions containing a provision on functional equivalence of writing, or similar provisions.

<sup>58</sup> The draft model law does not require explicitly the use of the written form, which is presumed by referring to the inclusion of information on paper.

<sup>59</sup> This article sets forth the requirements for achieving functional equivalence between an electronic and a handwritten signature. It is based on article 9, paragraph 3 of the United Nations



method is used to identify that person and to indicate that person's intention in respect of the information contained in the electronic warehouse receipt.

*Article 39. Endorsement*<sup>60</sup>

For the purposes of articles 15 and 31, the requirement of endorsement of a [paper][non-electronic] warehouse receipt is met with respect to an electronic warehouse receipt if the information required for the endorsement is included in the electronic warehouse receipt and that information is compliant with the requirements set forth in articles [37 and 38].

*Article 40. Amendment of an electronic warehouse receipt*<sup>61</sup>

[For the purposes of article 12,] information contained in an electronic warehouse receipt may be amended if a reliable method is used for amendment of information in the electronic warehouse receipt so that the amended information is identified as such.

*Article 41. General reliability standard*<sup>62</sup>

For the purposes of articles 35, 36, 38 and 40, the method referred to shall be:

- (a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in light of all relevant circumstances, which may include:
  - (i) Any operational rules relevant to the assessment of reliability;
  - (ii) The assurance of data integrity;
  - (iii) The ability to prevent unauthorized access to and use of the system;
  - (iv) The security of hardware and software;
  - (v) The regularity and extent of audit by an independent body;
  - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
  - (vii) Any applicable industry standard; or
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.

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Convention on the Use of Electronic Communications in International Contracts. The enactment of this article may be omitted if the enacting jurisdictions has already adopted legislation on electronic transactions containing a provision on functional equivalence of signature, or other legislation on electronic signatures.

<sup>60</sup> The draft article clarifies that the endorsement of an electronic warehouse receipt may be effected by inserting the name of the endorsee (in a manner functionally equivalent to writing) and signing the endorsement. It is based on article 15 MLETR.

<sup>61</sup> The draft article is not drafted in functional equivalence terms because the input method used for electronic warehouse receipts may require the compilation of certain fields. It is based on article 16 MLETR. Draft article 12 of the model law does not require that information entered subsequently in a paper warehouse receipt should be identifiable as such.

<sup>62</sup> The article provides a non-exhaustive list of circumstances relevant to determine the reliability of the method used in managing electronic warehouse receipts. It is based on article 12 MLETR. It applies under both the functional equivalence approach and the medium neutral approach. The article does not prevent the enacting jurisdiction from adopting mechanisms to assess the reliability of methods and systems before their use (ex-ante approach) and to associate legal consequences to that assessment (e.g. legal presumptions). The Working Group may wish to consider if a reference to any agreement of the parties should be added to the list, at least with regard to the effects between those parties.

## **Chapter VII. Application of this Law**

### *Article 42. Entry into force*

1. This Law enters into force on [*date as specified by the enacting State*].
2. This Law applies to warehouse receipts [and pledge bonds] that are issued after this Law enters into force.

### *Article 43. Repeal and amendment of other laws*

1. [*The laws as specified by the enacting State*] are repealed.
  2. [*The laws as specified by the enacting State*] are amended as follows [*the text of the relevant amendments to be specified by the enacting State*].
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