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Warehouse Receipts**

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SUMMARY REPORT

OF THE FIRST SESSION

(Videoconference, 2 – 4 December 2020)

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1. The first session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (hereafter the “Working Group”) took place via videoconference between 2 and 4 December 2020. The Working Group was attended by 30 participants, comprised of 9 Working Group members; 17 observers including representatives of international and regional organisations as well as the private and public sector; and 4 members of the UNIDROIT Secretariat (List of participants available in Annexe I).

Item 1: Opening of the meeting and welcome by the Secretary-General

2. UNIDROIT Secretary-General *Mr Tirado* opened the session and welcomed the participants to the first meeting of the Working Group. He noted the importance of the partnership with the United Nations Commission on International Trade Law (UNCITRAL) to develop a legislative instrument on warehouse receipts, which should be key in access to finance and would probably take the form of a Model Law (hereafter the “MLWR”), to help countries modernise their warehouse receipt systems. He explained that, during the first two years of the project, UNIDROIT would prepare a first draft of the MLWR, which would then be submitted to UNCITRAL for intergovernmental negotiations, and ultimately become a joint instrument. He recalled that a Model Law on Warehouse Receipts would fit perfectly within UNIDROIT’S work in the field of access to finance, agricultural law, factoring, and secured transactions. Finally, he introduced UNIDROIT Legal Officer Ms Wehling, stating that she would lead this project on the part of UNIDROIT.

3. *Mr Estrella Faria* noted that the project had been originally proposed to UNCITRAL by the United States. While it would not have been the first time that UNIDROIT and UNCITRAL developed an international instrument together, he emphasised that the MLWR would be formally adopted as a joint instrument. He informed that the UNCITRAL Commission had approved the project as proposed by both Secretariats, and that the joint development added an extra layer of governance control since UNIDROIT and UNCITRAL would have had to report to their governing bodies and to respect their given mandate. The Model Law would be developed in the six UN languages and would benefit from UNIDROIT’S line of work on secured transactions and private law and agriculture, and the promotion of the instrument could rely on the network established by UNIDROIT with the Rome-based UN agencies. Lastly, he thanked the UNIDROIT Secretariat and the Kozolchyk National Law Center (hereafter “NatLaw”) for the preparation of the documents for this Working Group session.

Item 2: Formal appointment of the Chair of the Working Group

4. In accordance with the UNIDROIT Statute, *Mr Tirado* recalled that the Working Group would be presided over by a member of the Governing Council (cf. [UNIDROIT Statute](#), Article 13(2)). He proposed to nominate Ms Dacoronia (Professor of Civil Law, University of Athens - Greece) as Chair of the Working Group.

5. *Ms Dacoronia* was confirmed as the Chair of the Working Group (hereafter the “Chair”).

Item 3: Adoption of the agenda and organisation of the session

6. *The Chair* thanked the Working Group for their support and invited the participants to briefly introduce themselves.

7. *The Working Group* then adopted the draft Agenda ([UNIDROIT 2020 – Study LXXXIII – W.G.1 – Doc. 2](#), available in Annexe II) and agreed with the organisation of the session as proposed.

Item 4: Preliminary considerations in relation to the work on a Model Law**(a) Objectives of the Model Law**

8. *The Chair* drew the Working Group's attention to Section I of the Issues Paper ([UNIDROIT 2020 – Study LXXXIII – W.G.1 – Doc. 3](#)). She noted that the main objectives of the MLWR would be to provide a set of black-letter rules to assist legislators in modernising their national warehouse receipt legislation, and thereby increase harmonisation and facilitate cross-border transactions.

(b) Alignment with existing international instruments

9. *The Chair* introduced the topic with reference to paragraphs 21 - 26 of Doc. 3. She drew the Working Group's attention to the first question included in the Issues Paper, at paragraph 26, on whether there were other international instruments that should be considered in addition to the Conventions and UNCITRAL Model Laws described in that Paper. She invited Ms Wehling to briefly present the guidance that had recently been published by international organisations.

10. *Ms Wehling* introduced the most recent guidance documents addressed to legislators to introduce or reform warehouse receipt systems.¹ She noted that a detailed overview of the guidance documents – as well as the relevant legal instruments, such as the Model Laws and Conventions – was set out in the feasibility study carried out by NatLaw for UNCITRAL in 2019 ([UNCITRAL, Developing an Instrument on Warehouse Receipts, 2019](#)). She also noted that a comparative table summarising the guidance documents was included in Annexe 1 of the Background Research Paper ([UNIDROIT 2020 – Study LXXXIII – W.G.1 – Doc. 4](#)).

11. *The Chair* then invited Mr Dubovec to present the Background Research Paper on relevant international and national legal frameworks for the drafting of a Model Law on Warehouse Receipts.

12. *Mr Dubovec* introduced the Background Research Paper. He explained that the Paper considered a variety of standards and approaches used to govern warehouse receipts that had been adopted around the globe. He reiterated the need for modernisation and harmonisation. With regards to the question included in paragraph 26 of the Issues Paper, he noted that the Working Group could also consider other ongoing projects, such as the UNIDROIT projects on "Best Practices for Effective Enforcement" and on "Digital Assets and Private Law".

13. *Mr Tosato* suggested that the Working Group keep track of national initiatives, such as projects under development in the United States and the United Kingdom. In particular, he mentioned that England had a Law Commission Initiative, which analysed electronic documents of title, focusing on the issue of control and possession; he also noted that the United States was looking at the possibility of tokenised documents of title in the context of the Uniform Commercial Code (UCC).

Item 5: Consideration of the scope of the Model Law and issues to be covered

14. *The Chair* turned to the scope and content of the MLWR and the corresponding sections II and III in the Issues Paper.

¹ FAO/EBRD, *Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends*, 2015; WBG, *Guide to Warehouse Receipt Financing Reform: Legislative Reform*, 2016; OAS, *Principles for Electronic Warehouse Receipts for Agricultural Products*, 2016.

(a) Scope

15. *The Chair* drew the Working Group's attention to the list of essential aspects to govern the private-law side of a warehouse receipt system, which were included in paragraph 28 of the Issues Paper. She noted that the details of the scope would be subject to further discussion by the Group, but clarified that the regulatory aspects should not be included in the MLWR text.

16. Referring to the list included in paragraph 28, *Mr Estrella Faria* noted that contractual rights and obligations of the parties should not be the focus of the MLWR and should therefore be analysed only to the extent the instrument itself would require. He recalled that the main focus should be on the financing function of the warehouse receipt, as originally proposed to UNCITRAL. He noted that the contractual rights and obligations of the parties could be examined at a later stage, when a solid document had been developed. Then, if necessary, the Working Group could analyse to what extent the contractual aspects should be addressed, and whether they should be included in the MLWR, a guide to enactment, or a separate document.

17. *Mr Riffard* queried whether the Working Group envisaged developing a Model Law that would simply consolidate the current solutions or would be forward-looking.

18. *Ms De Las Heras Ballell* noted the important role of technology and commended a specific reference to technology-related aspects in the list of essential aspects. She emphasised that all the concepts, rules and principles should reflect a conventional format and, at the same time, a digital format.

19. *Mr Tosato* remarked that technology should not be addressed as a distinct element. He also noted that all warehouse receipt laws were built upon the freedom of contract and the suggestion of deferring the analysis of the contractual aspects to the end would therefore be difficult to follow.

20. *Mr Gross* drew the Working Group's attention to paragraph 29 of the Issues Paper, which indicated that the MLWR would not be limited to agricultural commodities. He raised the question of whether the Model Law should be entitled "storage receipts", rather than warehouse receipts, noting the narrow confine of goods that were deposited in warehouses, as opposed to other types of storage facilities. Furthermore, he noted that technology enabled the receipt to be more dynamic, as one could update the content of an electronic warehouse receipt (EWR), for example, to monitor moisture loss in the case of grain. He queried whether "amendments of receipts" should be included in the list.

21. *Mr Dubovec* agreed that the instrument should support the types of transactions mentioned by Mr Gross. He noted that a warehouse receipt incorporated contractual undertakings and therefore some of the contractual rights and obligations would need to be part of the project, even though warehouse contracts were not the focus of this project.

22. *Mr Karfakis* explained that in many countries the concept and the practice of a warehouse receipt system were very rudimentary or non-existent. He pointed out that it would therefore be helpful to promote a MLWR that indicated the contractual rights and obligations of the different parties engaging in such a practice. He also noted that it would be helpful to have examples highlighted in an Annexe to the MLWR or another accompanying document, to promote the MLWR in the countries that the United Nations Food and Agriculture Organization (FAO) works with, such as in Sub-Saharan Africa.

23. *Mr Tirado* acknowledged the importance of the issue raised by Mr Karfakis. He noted that the work on this Model Law however should address the contractual law aspects as they emerged. He emphasised that if FAO considered it useful to further analyse the contractual aspects, it would

be possible to propose a further project to the UNIDROIT Governing Council, which would be in line with the other agricultural law projects developed by the UNIDROIT in partnership with FAO and the International Fund for Agricultural Development (IFAD) providing guidance on the contractual side.

24. *Ms Wehling* replied to Mr Gross's question, noting that "amendments to receipts" should be covered by the scope of the Model Law, and that the dynamic nature and updating of EWRs was indeed addressed in paragraphs 101 and 102 of the Issues Paper.

25. *The Chair summarised the discussion. The Working Group agreed that the MLWR should not deal with contractual rights and obligations of the parties as a primary object, and that those should be taken into consideration at a later stage, as proposed by UNCITRAL. The Group agreed that a prevailing aspect of the MLWR should be the financing function of the warehouse receipt. The Group also decided that the Model Law should be forward-looking and that technology should permeate the entire instrument as opposed to being an aspect covered distinctly. The Chair noted that the Working Group would further analyse whether additional aspects should be included in the scope of the Model Law.*

(b) Content

i. Definitions

26. *The Chair* referred to Section III of the Issues Paper regarding the content of the MLWR. She noted that both the UNCITRAL Model Law on Secured Transactions (MLST) and the UNCITRAL Model Law on Electronic Transferable Records (MLETR) contained definitions of terms that might be relevant for the MLWR. She invited the Working Group, at this stage, to merely consider, while reviewing the following sections, what terms should be defined in the MLWR.

ii. Legal status and format of warehouse receipts

Legal status

27. *The Chair* introduced the topic with reference to paragraphs 35 - 43 of Doc. 3. She noted that the two main issues for the Working Group to consider were whether a warehouse receipt should be considered as a "document of title", and whether it should be recognised as "negotiable". She asked the Working Group whether the MLWR should define the features of the warehouse receipt as a transferable "document of title".

28. *Mr Budd* noted that the concept of "document of title" was critical to the utility of the instrument in terms of trade and financing, as it represented both the title to the goods as well as the rights and obligations of the warehouse receipt holder and the warehouse operator. He emphasised that the "document of title" should be clearly defined in the MLWR to embrace both the title to the goods as well as the rights and obligations of the warehouse operator.

29. *Ms De Las Heras Ballell* noted that some countries had a well-elaborated concept of document of title and would not require any explanation, but other jurisdictions had an unclear or controversial definition. Therefore, it would be useful to clarify the features that a warehouse receipt as a document of title should have in the MLWR.

30. *Mr Dubovec* noted that a document of title and its negotiability were the two most important functions of the warehouse receipt and underlined that the document of title function had certain elements that required clarification in the MLWR. He also drew the Working Group's attention to a case brought to a court in England in 2019, which had held that a warehouse receipt issued under English law was not a document of title.

31. *Mr Budd* noted that to achieve a “document of title” status, traditionally a warehouse receipt had to be in a negotiable form. He pointed out the importance of examining the necessary connection between the concept of negotiability and the concept of document of title. He explained that the concept of negotiability was not well known, particularly in Africa and the Middle East, and therefore noted that it might not be necessary to require a document of title to be negotiable and that it could be sufficient to define it simply as a document in a transferable form.

32. *Mr Wilson*, on behalf of the World Bank Group (WBG) and the International Finance Corporation (IFC), expressed his appreciation for the documents and preparatory work undertaken by UNIDROIT. He underlined the difficulty in facilitating agricultural financing in many developing countries, and explained that among the reasons were the absence of a sound warehousing system and how warehouse receipts were viewed in that market. He highlighted that the MLWR continued UNIDROIT’s work together with UNCITRAL to help develop agricultural financing, and the IFC would be a reliable partner in that endeavour.

33. Concerning the scope of the MLWR, *Mr Wilson* expressed his appreciation for the inclusion of the issue of digitisation and EWRs, and noted IFC’s interest in the potential tokenisation of warehouse receipts and the trading of warehouse receipts on blockchain platforms. Explaining that a token could only be traded within a specified ecosystem, such as in a distributed ledger, he raised the question of whether that would reside somewhere in between non-negotiable and negotiable. He agreed that the MLWR should cover both negotiable and non-negotiable warehouse receipts.

34. *Mr Dubovec* drew the Working Group’s attention to Section D of the Issues Paper for a more comprehensive discussion of “transfer and negotiation”. He noted that if the MLWR relied on the registration of warehouse receipts, such as in blockchain, then the traditional concept of negotiation would not apply, while this concept would need to be taken into account if the final scope of the MLWR preserved the paper-based receipt.

35. *Mr Budd* clarified his preference to unburden the courts by removing the concept of negotiation and reducing it to transferability, since courts in many countries struggled with the concept of negotiation.

36. *Ms De Las Heras Ballell* agreed that negotiability could be a confusing term and emphasised that transferability was a more neutral and less dogmatic term.

37. *Mr Wilson* queried how the concept of transferability would be addressed in jurisdictions that dealt with negotiability on a daily basis and how those two concepts would be coordinated. He stated that introducing another version of the concept of negotiability, through the concept of transferability, would make things more difficult.

38. *Mr Budd* noted that the concept of negotiability, in terms of document of title, had been developed under the US Uniform Warehouse Receipts Act and that very few jurisdictions required documents of title to be in negotiable form, as most required only the transferable form. He observed that the jurisdictions which required negotiability for a document of title were the ones that followed the US model, such as the Philippines, Malawi, and some African States.

39. *Ms De Las Heras Ballell* queried whether transferability simply replaced negotiability or if transferability comprised negotiability. She pointed out that it would be useful to have a definition of both concepts for the next Working Group session.

40. *Ms Neo* stated that the Working Group should consider the reason why some jurisdictions required negotiability and whether the MLWR would lack anything if it did not include that concept.

41. *The Chair summarised the discussion. The Working Group agreed that the MLWR should cover both transferable and non-transferable warehouse receipts, while the Group would further consider whether the term "transferability" or "negotiability" should be used in this respect.*

Format of warehouse receipts: single and double receipts

42. *The Chair invited the Working Group to turn to the discussion in item B.2 of the Issues Paper regarding the format of warehouse receipts. She introduced the topic and asked whether the MLWR should accommodate both single and double receipts, or opt for one of these approaches.*

43. *Mr Dennis noted that the Asia-Pacific Economic Cooperation (APEC) Forum organised a number of workshops and surveys concerning supply chain finance and warehouse receipts. He drew the Working Group's attention to the conclusions of an Economic Committee report that highlighted the complexity of the dual document system, particularly the associated increase in the risk of fraud, as one of the reasons for the underutilisation of warehouse receipts as a financing instrument in civil law economies. The report concluded that the introduction of a system of negotiable EWRs would help address the complexity of the dual document system.*

44. *Mr Riffard emphasised the importance of analysing the reasons for the adoption of the dual system, especially in civil law countries, and whether the dual system was still useful in practice. He recalled that countries had adopted the dual structure in the past as a consequence of the prohibition of non-possessory security interests. He also noted that very few dual receipts were separately transferred in France. The evolution towards an EWR system, which would be based on a register allowing electronic creation, transfer, and pledge of the warehouse receipt, would make this dual nature obsolete.*

45. *Mr Dubovec informed that, while preparing the feasibility study submitted to the UNCITRAL Commission mentioned previously, NatLaw had analysed the dual structure of warehouse receipts in some jurisdictions. He noted that the dual structure existed owing to the realisation, in mid-19th century France, that when a borrower or farmer borrowed money against the warehouse receipt the loan had been over-collateralised. Splitting the warehouse receipt into the pledge bond and the warehouse receipt itself was believed to maximise the value of the warehouse receipt so that the farmer could also deal with her equity that had not been encumbered by a pledge. However, the intention to unlock the value in the warehouse receipt had not been achieved through this mechanism. He concluded that NatLaw did not identify any practical benefits, and queried whether other experts with experience in the field had identified advantages.*

46. *Ms De Las Heras Ballell noted that the dual structure was based on the paper warehouse receipt, which required two different writings to represent two different types of rights. She opined that this had become obsolete and, for the MLWR to be suitable for EWR in the digital environment, the Working Group should not consider the form of a document, but rather the data and information included therein.*

47. *Mr Mukami observed that if the MLWR was intended for universal use then it had to consider all the different practices even if anachronistic or obsolete. He noted that it would be critical to give legislators a choice and an explanation as to what was done in different parts of the world and what was the most appropriate model to adopt for their jurisdictions.*

48. *Ms Neo queried whether dual receipts facilitated fraud. She agreed that the practice of dual receipts should be maintained if it served a certain purpose, otherwise it would be cumbersome to maintain it. Concerning the electronic system, she queried how a system that contemplated electronic receipts would be developed to also cater for paper-based receipts. She emphasised the*

need to provide for a system that would be neutral enough to operate in the electronic environment as well as in the paper environment.

49. *Ms Tramhel* reported that the issue of dual versus single receipt had also been considered during the development of the Principles for Electronic Warehouse Receipts for Agricultural Products of the Organization of American States (OAS). She explained that research had been undertaken on the ground to understand the users' perspective, and referred to an expert from the Ministry of Agriculture in Argentina who explained that the dual system had been working very well. She also highlighted that the FAO publication had stressed that whatever system design, it needed to integrate within the broader existing legal framework for it to be accepted. Furthermore, she noted that the issue of electronic vis-à-vis paper systems had also been analysed and that the integration of both systems was challenging.

50. *Mr Sono* highlighted that the Working Group should ensure that the MLWR presented a recommendable system and noted that the single document seemed to be the recommendable solution. He exemplified that a double receipt system had been adopted in Japan in the late 19th century, but that it was not used, and therefore the law had been modified to a mixed system approach in the early 20th century. However, warehouse operators were not willing to issue double receipts because they considered it complicated, and in 2020 a new law was adopted that abandoned the mixed and the double receipt systems. He drew the Working Group's attention to the APEC experience to highlight the preference for the single receipt. However, he expressed interest in understanding the views of the practitioners from the jurisdictions where the double receipt system was used.

51. *Mr Gross* noted that the single receipt system was the prevailing practice across Africa, in both civil and common law jurisdictions. Moreover, he noted that the double receipt might not be the best solution but was an important approach to bear in mind since many depositors in developing countries would look for paper documents they could keep as a record, even when the actual receipt was electronic or had been pledged to the bank for a loan. He underlined the importance of ensuring that the depositors had something tangible to hold onto when they were not fully included in the digital world.

52. *Mr Dubovec* noted that implementation on the ground would be complicated if the MLWR offered different options for single and double receipts. He underscored that if the Working Group decided to retain the presentation of options this would significantly complicate the drafting of the Model Law. He illustrated that the MLWR would have a chapter on financing and security rights that would draw from the MLST, which in turn considered a warehouse receipt as a single negotiable document.

53. *Mr Kohn* noted that if one of the goals of the MLWR was to promote cross-border commerce, both in terms of sales of goods and their financing, then a single approach seemed advisable.

54. *Mr Estrella Faria* expressed concern about an entire region that used a dual receipts system, namely Latin America, eventually considering that their practice would be condemned as inefficient. He recalled that the main purpose of the MLWR should be the encouragement to move to EWRs and noted that the question regarding the single or dual approach would disappear since the electronic system did not use a dual warehouse receipt. He therefore suggested that the Working Group move along and consider the need for and desirability of advocating only one model at a later stage and only after ample consultation with practitioners and industry that operated under both systems.

55. *Ms Wehling* observed that an overarching question for the Working Group to consider was whether the MLWR should be conceived as an instrument that would be useful for all or only a

certain group of countries. She suggested that the Working Group examine whether there was a specific function that dual receipts performed, apart from the possession requirement for pledges, which would explain why the dual system was in place in numerous countries. She also suggested considering whether it would be useful to include an explanation of the single and dual approaches in a guide to enactment or explanatory document.

56. *Ms Ayala* pointed to practical issues faced in Mexico to underscore that having two documents was risky and increased the risk of fraud.

57. *Ms Tramhel* agreed with the need to consider whether the MLWR, if opting for the single approach, would be essentially isolating a group of countries that might consider its adoption.

58. *Mr Tirado* noted that technically the single approach seemed to be the preferred approach however, if an entire subcontinent used the dual system, the Working Group would need a strong reason to abandon it. Recalling the comments from Mr Gross on the digital gap and the paper requirement in many countries, he queried whether the adoption of a single approach rather than a dual approach would leave the system out of reach for certain countries. He supported the elaboration of a guide to enactment or additional instrument, if the governing bodies agreed, to reflect the models and how to use them.

59. *Mr Karfakis* queried whether a phased approach could be considered to accommodate the different practices and laws at the beginning and then, in a more advanced phase, encourage a forward-looking approach, which would indicate that paper-based or dual receipts systems might be redundant.

60. *Mr Rutten* stated that there seemed to be no efficiency benefit of double versus single receipts, however, the *bono de prenda* (pledge bond) in many Latin American countries allowed for direct (extra-judicial) execution upon default. He explained that the *bono de prenda* was connected with other laws and could be the only lending instrument that allowed for extra-judicial enforcement in case of borrower default. Therefore, moving from double to single receipt systems might be difficult, as it would require other laws to be amended.

61. *Mr Estrella Faria* noted that, if persuaded of the need to advocate the single system, the Working Group might find a way to make its preference clear and, in a footnote, indicate the reasons for it and explain how the provisions of the MLWR could be adapted to a dual approach. He reiterated that the Working Group should however be open to possibly accommodating both systems in the end, even if it decided to convey the message that a single system would be preferred from an efficiency point of view.

62. *Mr Budd* reported that also in Russia and Ukraine legislation provided for double receipts but those were rarely used.

63. *The Chair summarised the discussion. The Working Group agreed to further analyse the reasons to consider the single warehouse receipts system as the preferred option. The Group also agreed to examine the functional reasons for the use of the dual system in numerous countries.*

iii. Receipt details and form

Minimum documentary information

64. *The Chair* introduced the topic and drew the Working Group's attention to the list of minimum information set out in paragraph 50 of the Issues Paper. She asked whether the MLWR

should prescribe similar minimum information to be contained in the receipt, and whether it should provide for the consequences of a failure to include the required information.

65. *Ms Neo* noted that if the minimum requirements were included in the MLWR, then the consequences for not meeting those requirements should also be addressed, otherwise the requirements would become meaningless. Referring to the list of content requirements included in paragraph 50 of the Issues Paper, she noted that the information regarding "obligations and rights of the depositor and warehouse and/or reference to the applicable law" included in the list would be complex and thus difficult to include.

66. *Ms Wehling* explained that the inclusion of the "obligations and rights of the depositor and warehouse and/or reference to the applicable law" was suggested as an alternative option, because in some countries, instead of detailing the obligations and rights in the receipt, the parties simply included a reference to the applicable law. This reference would be shorter but still clarify the rights and obligations. Both practices were interchangeable.

67. *Mr Estrella Faria* observed that if some information regarding, for instance, the "date of issue and expiry of the receipt" and "name and location of the warehouse where the goods are stored" had not been included, then the document itself would not be valid. However, the need to include a reference to the applicable law as a minimum requirement could be questioned.

68. *The Chair* suggested evaluating the consequences of missing information before analysing which minimum content requirements should be required by the MLWR.

69. *Ms Wehling* noted the relevance of national contract laws for this question, which attached different consequences to the lack of key information in similar documents. She suggested that the Working Group take this into account when considering the consequences of missing information in warehouse receipts.

70. *Ms Neo* queried whether it would be necessary to provide for consequences of missing information in the MLWR if these were already established under national contract law, and what the consequences would be if the MLWR provided for more severe consequences. She agreed that it was important to analyse how the minimum requirements and consequences would relate to the national contract law.

71. *Mr Dubovec* noted the need to decide whether the MLWR would cease or continue to apply in cases of invalid warehouse receipts for discrepancies or inaccuracy.

72. *Mr Sono* agreed that the MLWR should provide for minimum requirements and consequences, however, he noted that the invalidity of the warehouse receipt should not be the preferred consequence for missing information. He emphasised however, that if certain information, such as the signature of the operator, was missing then the receipt would be invalid.

73. *Mr Estrella Faria* agreed that invalidity should be the last consequence for lack of information. In the absence of a general theory of negotiability under civil law, he suggested that the Working Group consider warehouse receipts as quasi-negotiable instruments, which would protect the holder.

74. *Mr Budd* noted that the lack of an amount on a promissory note and cheque, as well as the lack of signature, would disqualify them from protection under the laws governing negotiable instruments.

75. *Mr Tosato* queried whether the Working Group could consider the lack of the minimum content requirements as a matter of nullity rather than invalidity. Moreover, he recalled that omissions and inaccuracies should be distinguished, noting that presumptions could apply to omissions but not to inaccuracies. He noted that it would be important to question who bore the risk of any inaccuracy.

76. *Mr Budd* queried whether it would be necessary or even desirable to require the date of expiry of the receipt and, if so, what the consequences would be.

77. *Mr Tosato* noted that the absence of an expiration date would not nullify a warehouse receipt, but rather it would be presumed to be open-ended. He also noted that it was possible to issue a receipt with a defined expiration date.

78. *Mr Gross* agreed that including an expiry date would not be an issue of nullity but emphasised that it was a matter of good practice. He explained that having an expiry date could shape the expectations of the different actors concerning the situation of the goods in the warehouse.

79. *The Chair* suggested that the Working Group consider each of the requirements mentioned in paragraph 50 to decide which ones would qualify the document as a warehouse receipt.

80. For the selection of minimum requirements, *Mr Tirado* noted that lessons might be taken from the Geneva Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes.

81. *Ms De Las Heras Ballell* stated that neither the obligations and rights nor the applicable law should be considered among the core minimum requirements.

82. Recalling the Geneva Convention and the theory of documents of titles and bills of exchange, *Mr Tirado* expressed his concern about the inclusion of some items such as “the goods being insured” among the core minimum requirements for a warehouse receipt. He queried whether the consequence of missing minimum information would be nullity of the warehouse receipt.

83. *Mr Gross* queried whether the Working Group members were concerned only with the absence of certain minimum requirements that would nullify the warehouse receipt or whether they were also concerned about promoting good practice. He noted that the requirements regarding the expiration date, the reference to the rights and obligations of the depositor and warehouse under national law, and whether the goods were insured, were all matters of good practice. However, he agreed that the receipt should not necessarily be nullified in their absence. He explained that as good practices, these minimum requirements would create transparency for all the different actors that would be involved in the transactions supported by the receipt.

84. *The Chair* queried whether the Working Group agreed with requiring that the rate of storage and handling charges and any warehouse lien over the goods ought to be stated in the receipt.

85. *Mr Budd* opined that there was no need to mention the rate of storage and handling charges in the receipt. He acknowledged that this was commonly required in warehouse receipt laws, but noted that in practice the warehouse receipt and the rate of storage and charges were addressed in separate agreements. If the Working Group decided to consider it as one of the minimum content requirements then the MLWR should recognise that the rate of storage and handling charges could also be incorporated in a separate agreement. He agreed that the date of issue should be considered as a minimum requirement and, if there was an expiration date, it would probably be desirable to mention it in the receipt, yet not as an issue of validity.

86. *Mr Gross* suggested including in the list of minimum requirements whether the goods are commingled or identity-preserved.

87. *Mr Tirado* questioned whether in the absence of a reference to the goods being insured, the document would not be considered a warehouse receipt.

88. *Mr Budd* opined that a warehouse receipt should not exist in the absence of the following information: name and location of the warehouse where the goods are stored; the quantity and quality of the stored goods; the name of the party who would receive the receipt; the signature of the warehouse operator; and the date of issue. The remaining requirements were desirable, but not essential.

89. *Ms Wehling* queried whether, if the date of issue was missing in a document, that document should therefore not be considered a warehouse receipt. She referred to the Rotterdam Rules under which, if the date of issue was missing in a bill of lading, it could be replaced by presumption.

90. Regarding the date of issue, *Ms De Las Heras Ballell* noted that it was essential for many purposes such as to identify the applicable law and the capacity of the parties, and a presumption could create the problem of pre-dating or post-dating.

91. *Mr Estrella Faria* noted that the analogy with the bills of lading would be problematic because it would be easier to fill in that gap in the bills of lading context where other supporting documents (such as mate's receipts) were issued at the same time.

92. *Mr Budd* noted that Article 7 of the US Warehouse Receipts Act set out many essential terms, however the absence of any of these terms would not result in nullity or invalidity of the document. He noted that the list of requirements should be described as mandatory but the consequences should fall on the warehouse operator to compensate the depositor, or any other person interested in those goods, for any damages that resulted from the failure to include a mandatory term.

93. *Mr Estrella Faria* recalled that the purpose of most of these formal requirements was that the third party who received that document had some comfort that this was a document to which the law attached a certain number of attributes, including that a holder in due course would be protected against any claims between the depositor and the warehouse regarding their underlying contract and that he or she had an undisputed right to the underlying goods. He stressed that this was not related to the liability of the warehouse operator under the underlying contract.

94. *The Chair summarised the discussion. The Working Group agreed that, at least, the following items should be set out as minimum content requirements in the MLWR: the name and location of the warehouse; the unique receipt identification number; the quantity and the quality of the stored goods; and the signature of the warehouse operator. If those were not included in a document, that document would not qualify as a warehouse receipt. The Working Group agreed to further consider how to address the other requirements. The Group also agreed that, in general, invalidity should be the last consequence for lack of information.*

95. *The Chair* moved on to the next question, asking the Working Group whether the MLWR should include presumptions to fill in missing information in warehouse receipts.

96. *Mr Wilson* suggested that the Working Group consider, at some point, items that should not be contained in a warehouse receipt, and whether the MLWR could provide guidance in this respect. For example, the value of the stored goods could be indicated in warehouse receipts in some jurisdictions in Latin America, which created a problem because the receipt, if it was transferable,

should be transferable at market price, based on the quantity and quality of the deposited commodities. Another example was that many receipts circulating in Latin America also contained an indication of the security interest, either as a coupon attached to the receipt or as an item in the receipt itself. This created a problem because sometimes these were separated and it might be incompatible with the MLWR if that provided for transferability by endorsement on the receipt itself.

97. *Mr Dubovec* noted that there were different reasons why the value was required in a warehouse receipt, for example for taxing of certain transactions. He also noted that some laws required the warehouse to verify whether the goods were subject to a security interest before the deposit was effectuated and a receipt issued, and that the Working Group could consider this issue under the section on security interests.

98. *Mr Tirado* stated that the aspect of the value raised by Mr Wilson was interesting as the value of the goods could change over time. He queried how this could be dealt with when the warehouse receipt was being traded in a platform or a secondary market, and a face value had been included in the receipt that did not correspond to the value of the assets anymore.

99. *Mr Mukami* suggested that this matter could be addressed in the accompanying guide, rather than in the text of the MLWR.

100. *Mr Estrella Faria* remarked that the law should require the quantity of the goods to be stated in the receipt, but not the value, since the obligation of the warehouse operator was to deliver a certain quantity of goods, not to deliver value. He added that the guide could mention the difficulties that were created by the requirement to state the value in a warehouse receipt.

101. *The Chair* queried whether also the quality of the stored goods should be indicated in a warehouse receipt, so that an interested party could identify the condition of the stored goods.

102. *Mr Estrella Faria* explained that this was a different issue. If the goods were damaged, if the grain had a degree of humidity that exceeded the normal degree for storage, that should be stated in the receipt because it had implications for both the delivery obligation and the tradability. He noted that this, however, was not the same as the actual market value of the goods at that point in time.

103. *Ms Wehling* exemplified that especially for agricultural commodities, some jurisdictions allowed for information on the allowable weight or quality loss to be included in the warehouse receipt, and that this was different from stating the value of those commodities.

104. *Mr Wilson* suggested that an analysis of these issues should be included in the commentary or guide. He opined that there were many practical implications for requiring the market value, and therefore the request from the World Bank was at least to be strong in the recommendation with regard to this issue.

105. *Mr Estrella Faria* described costly litigation in Brazil up to the Supreme Court due to a new clause in the Civil Code reintroducing the old Roman lesion theory. Accordingly, if one had a value stated in the warehouse receipt which then tripled due to market fluctuations, that person was invited to litigation by bad faith parties arguing that this was an invalid contract, as they paid three times the actual value of the goods as stated in the paper. The guide should strongly discourage this option.

106. *The Chair* referred to the question of whether presumptions should be included in the MLWR to fill missing information in receipts and asked the Working Group whether a provision similar to Article 39, paragraph 1 of the Rotterdam Rules could be considered.

107. *Ms Wehling* recalled that the documents covered by the Rotterdam Rules had different characteristics than warehouse receipts and therefore this had to be considered very carefully. She also noted that jurisdictions had different approaches with regard to legal presumptions. She therefore suggested that more information be collected on this question to enable a more informed discussion at the next session.

108. *The Chair* moved on to the next question, asking whether the MLWR should determine the effects vis-à-vis third parties if certain information was omitted or inaccurate. The Chair also invited the Working Group to comment on the enforceability of terms that sought to exclude or limit the liability of warehouses.

109. *Ms De Las Heras Ballell* noted that the question concerning the extent to which a liability limitation clause included in a contract could be effective vis-à-vis a third party if it was included in a warehouse receipt was also important in the context of bills of lading. She therefore suggested that the Working Group consider whether that discussion was applicable in the context of warehouse receipts.

110. *Mr Tosato* noted that if a limitation of liability clause was inserted in a warehouse receipt and the receipt started circulating in the market, the question was whether it carried over to successors. He recalled that the baseline was the standard of liability in a particular legal system for a warehouse, which could be strict liability or fault-based. In view of the approach of the project to focus on the financing function of the warehouse receipt, the issue of liability might not ultimately fit within the MLWR.

111. *Mr Budd* commented that it was part of the business model for any warehouse operator to be able to define and exclude liabilities that he or she was not comfortable with. If there was any suggestion in the law that these negotiated limitations might be avoided by subsequent transferees of the receipt, then the whole business model of the warehouse operator was going to be compromised, which would discourage them to issue receipts that were covered by this law.

112. *The Chair summarised the discussion. The Working Group agreed that background information should be prepared on the questions of whether the MLWR should include presumptions to fill missing information in receipts, and whether it should determine the effects vis-à-vis third parties if information was omitted or inaccurate. The Group should then consider both questions again.*

Form: paper and electronic receipts

113. *The Chair* introduced the topic with reference to paragraphs 54 – 62 of Doc. 3. She asked the Working Group whether the MLWR should: (i) adopt and explicitly formulate the general principles of non-discrimination against the use of electronic means, functional equivalence and technology neutrality of the MLETR; and (ii) adopt the provisions of the MLETR on control.

114. *Mr Sono* stated that he was neutral to including a provision stating the principle of functional equivalence in the MLWR, noting that the MLETR did not contain a provision that stated the principle, although it was based on that principle.

115. *Mr Estrella Faria* stated that from UNCITRAL's perspective it was important to ensure consistency with their more general standards in this area, which however did not mean that the MLWR had to restate those standards. With regard to the second question, he noted that if the Working Group considered that the rules contained for example in the UNCITRAL Model Law on

Electronic Commerce (MLEC) were not sufficient in the context of warehouse receipts and more concrete provisions were needed, UNCITRAL was open in that respect.

116. *Mr Dubovec* noted that this question could be addressed through drafting without elaborating a general principle. He suggested that the Working Group consider whether to include certain incentives for States to transition to an electronic system.

117. *Ms De Las Heras Ballell* stated that functional equivalence and technological neutrality should not necessarily entail that the MLWR would replicate how things were done on paper in a digital environment.

118. *Mr Riffard* queried whether the Working Group should first decide whether the MLWR would maintain a paper-based system or not.

119. *Mr Mukami* noted that it was probably premature at this time not to keep a paper-based system, as not all countries would be prepared for a purely electronic one.

120. *The Chair summarised the discussion. The Working Group agreed that the MLETR standards on functional equivalence, non-discrimination and technology neutrality should not be replicated for EWRs in the MLWR but rather serve as a basis for its provisions. The Group would consider whether more concrete provisions on control were needed for the specific context of warehouse receipts.*

iv. Transfer and negotiation

Transfer of negotiable receipts

121. *The Chair* introduced the topic with reference to paragraphs 63 – 67 of Doc. 3. She asked the Working Group whether the MLWR should require purchasers of paper negotiable receipts to notify the warehouse operator and receive confirmation in order to have priority rights against competing claimants.

122. *Mr Budd* explained that it was generally not required that the warehouse operator received notification of the transfer of a negotiable warehouse receipt. However, a careful lender or buyer would always notify the warehouse and confirm the existence and quality of the goods before advancing value against the receipt. Requiring notification and confirmation in the law could result in safer practices without disturbing the flow of commerce.

123. *Mr Dubovec* confirmed that a notification requirement would be unconventional, while in some jurisdictions notification might be required and did not affect the negotiability of the receipt. Concerning EWRs, the issuer typically operated the electronic system and made entries transferring rights, hence there was already that communication between the warehouse and the holder to effectuate transfers. However, for paper receipts such a requirement would basically make the warehouse an adjudicator of priorities, as its notifications and acknowledgments would decide priorities. Currently the notifications and communication between the warehouses and the receipt holders were informal, and if the MLWR were silent about notifications, nothing would preclude that practice.

124. *Mr Tosato* observed that notifying the warehouse would be an extra step when it comes to paper receipts, whereas it would be instantaneous in an electronic system. However, even if the warehouse were the gatekeeper of the electronic system, a notification requirement would not make warehouses adjudicators for priorities.

125. *Ms Neo* asked how many copies of a paper receipt were issued in practice. She noted that if there was only one, the document of title, and that could be transferred either through delivery or through endorsement and delivery, then there should be only one copy in most cases. Therefore, she queried what purpose a notification of the warehouse keeper would serve.

126. *Mr Budd* clarified that indeed the question would be whether notification of the warehouse would make the transfer effective, rather than achieving priority over other claimants.

127. *Ms Neo* stated that such a notification requirement would remove the benefits of negotiability, since it would require an additional action rather than to allow for transferring the document in a simple way.

128. *Ms De Las Heras Ballell* noted that in some cases of assignment, notification was required for the purposes of perfection, but not for the purposes of priority.

129. *The Chair summarised the discussion. The Working Group agreed that the MLWR should not require purchasers of paper negotiable receipts to notify the warehouse operator and receive confirmation in order to have priority rights against competing claimants. The Group further agreed that notification should also not be required for the perfection of the transfer of a paper negotiable receipt.*

Transfer of non-negotiable receipts

130. *The Chair* moved on to the method of transfer of non-negotiable receipts. She asked whether the MLWR should include a simple form for (i) the assignment of the non-negotiable warehouse receipt; (ii) the notification of the assignment to the warehouse operator; and (iii) the acceptance of the assignment by the warehouse operator.

131. *Mr Dubovec* remarked that the objective of the MLWR was to help modernise and harmonise legal frameworks, but also to promote good practices, and this question was related to the latter. Those forms could be included in the MLWR as standard forms that satisfied all legal requirements. However, he favoured that the MLWR should only include black-letter rules and any forms be included in an accompanying guide, similar to the UNCITRAL Registry Guide that had appended several forms.

132. *Mr Budd* described that many people found it difficult to understand the concept of “attornment”, a concept that embraced the notification of assignment and acceptance of the assignment by the warehouse operator, and that it might be useful to have a simple form for both to clarify this concept. Nevertheless, he agreed that it would be more appropriate to include such a form in a commentary or users guide than in the MLWR itself.

133. *Ms De Las Heras Ballell* queried whether it might be helpful to include a provision in the MLWR stipulating the requirements or minimum content for that communication to clarify what minimum contractual terms should be included in the communication.

134. *Mr Tirado* queried why an acceptance by the warehouse operator would be required for the transfer of non-negotiable receipts. He questioned such a requirement, explaining that documents of title issued as non-negotiable could not normally be circulated; however, as they embodied a claim, a receivable or a credit, they could always be assigned based on general assignment law. An assignment of a non-negotiable instrument, as a matter of general contract law, would normally not require the acceptance of the debtor, but only a notification to the debtor.

135. *Mr Dubovec* noted that the term “assignment” might have different meanings and requirements. He explained that a notification to an obligor who owed an obligation was not required as between the two parties, assignor and assignee, while some systems required a notification to the obligor to achieve third-party effectiveness. It might be advisable to avoid the term assignment, and rather describe how one transferred rights when the rights were embodied in a non-negotiable receipt.

136. *Mr Budd* replied to *Mr Tirado’s* question, noting that there were certain delivery obligations that a warehouse operator might not have anticipated. The warehouse operator might have reasons to consider that the acceptance of these new responsibilities was onerous and more expensive, and he might want to renegotiate the contract as a condition of his or her acceptance.

137. *Ms De Las Heras Ballell* noted that this might be a question of terminology, as the term “acceptance” could mean the freedom of the warehouse operator to decide whether to accept or refuse an assignment, while the Working Group was rather discussing an acknowledgement of receipt of such a notification. She therefore proposed that the term acceptance should be avoided in this context.

138. *Ms Neo* noted that if the holder of a non-negotiable receipt that had been assigned came to the warehouse to collect the goods, the warehouse keeper should not be allowed to refuse delivery. Regarding the explanation that the warehouse keeper might want to refuse due to extra obligations, she noted that under the law of bailment, a bailee was holding the goods for the bailor or to his order, which did not mean that he or she had to do anything more onerous than for the bailor.

139. *Mr Sono* agreed that acceptance should not be required for the purpose of transferring the non-negotiable receipt. He highlighted other effects attached to an acceptance of transfer by the warehouse operator, in particular that the operator would lose its defences from the underlying contract with the depositor. Regarding the inclusion of forms in the guide, he agreed that it was useful, but emphasised that the UNCITRAL Registry Guide contained a form for the filing in the registry, whereas the Working Group was discussing a form that the depositor or the holder could send to the warehouse operator. This would entail the question of how to certify or prove that the form was sent, which in turn depended on the relevant jurisdiction, and jurisdictions had different ways of certifying such notifications. He suggested that the Working Group consider how to address this issue in the MLWR.

140. *Mr Riffard* agreed with a notification requirement, but not with the acceptance by the warehouse operator. He questioned that there was any reason for the warehouse operator to be able to interfere and give acceptance in a transaction he was not a party to.

141. *Mr Dubovec* referred to the perfection of a security interest in a non-negotiable receipt or in goods in a warehouse, noting that this would typically occur through a possessory pledge, which required an undertaking of the person who was in possession indicating that it was holding for a particular person. Furthermore, he referred to regulated third parties, noting that one could not achieve an effective assignment nor claim funds from a bank or a security intermediary by mere notification; rather, laws required a control agreement, or a judgment, for a transferee to be able to obtain securities or funds from the intermediary. Given the regulated nature of the warehouse industry, he stated that the same logic applied to warehouse receipts, and thus a mere notification to the operator was not sufficient. He favoured the use of the term “acknowledgement” rather than “acceptance”, and “transfer” rather than “assignment”.

142. *Mr Budd* added that in practice this acknowledgment was normally drafted as a clear statement from the warehouse operator to accept instructions for the handling and delivery of the goods exclusively from the transferee or the bank pledgee. This was the key language requested

by banks from warehouses, from which they were purchasing, concerning non-negotiable warehouse receipts they were using as collateral for loans.

143. *The Chair summarised the discussion. The Working Group agreed that the MLWR would require an "acknowledgment" rather than an "acceptance" by the warehouse. The Group would further consider whether to provide forms for the following: the assignment of a non-negotiable warehouse receipt; a notification to the warehouse operator of the assignment; and an acknowledgment by the warehouse operator of that notification. If the Group decided to provide for such forms, those should not be included in the Model Law itself, but rather in a guide accompanying the MLWR.*

144. *The Chair moved on to the next question, asking the Working Group whether the MLWR should exclude any requirement for the tender or delivery of possession of an original non-negotiable receipt to the transferee as a condition to the transfer of the receipt or to obtain delivery of the goods.*

145. *Mr Tirado noted that, concerning a non-negotiable document, the physical copy could only serve the purpose of proof of a transaction, but its delivery could not be a condition for the transaction. Consequently, it would seem reasonable that the MLWR should exclude such a requirement.*

146. *Ms De Las Heras Ballell queried whether the purpose of such a requirement would be that the possession of the document would help to identify the person who wished to exercise the right over the goods.*

147. *Ms Neo queried how the warehouse would know to whom it should release the goods if it was not necessary to present the physical warehouse receipt.*

148. *Mr Budd explained that some laws required the surrender of a non-negotiable receipt as a condition for the release or transfer of the goods. However, there seemed to be no functional reason for this apart from identifying the person requesting the transfer of the goods to a third party.*

149. *Mr Tirado noted that, for a non-negotiable paper document, the transfer of possession of the paper could not be required to exercise the right. A non-negotiable receipt was created as non-negotiable precisely because the issuer did not want it to circulate, as it would normally by delivery of the paper. If the MLWR made transfer of possession compulsory, it would create a hybrid form of a non-negotiable paper document, which actually had to comply with all of the requirements for negotiable documents. Having the physical copy of the document might facilitate the ability of the transferee to obtain delivery of the goods. However, it could not be made compulsory. What mattered was that the warehouse knew who it had to deliver the goods to, which could be achieved by a pure notification.*

150. *Ms Ayala noted that in Mexico, when the warehouse receipts were non-negotiable paper receipts, the warehouse only received the instructions on the form and time of delivery of the goods, but not the document. She added that this was different with regard to EWRs, because an EWR would provide transparency about who held the document, and it was easier to instruct the warehouse how to proceed with the stored goods.*

151. *The Working Group agreed that the MLWR should not make the delivery of possession of a non-negotiable warehouse receipt a mandatory requirement for the transfer of the receipt.*

Negotiation

152. *The Chair* introduced the topic with reference to paragraphs 68 – 77 of Doc. 3. She asked whether the MLWR should embrace the term “negotiable document” (which might or might not exist or present conflicting interpretations under domestic laws) or instead adopt a solution based on a functional equivalent for negotiability that would be suitable for any legal system. She also asked what other examples for such a solution existed that could be useful for the Working Group to consider.

153. *Ms De Las Heras Ballell* suggested that the MLWR could describe the features of a negotiable document instead of simply using the term, an approach already adopted in other instruments. From that description, many jurisdictions might identify the features of a negotiable document, which already existed as a concept within their legal framework.

154. *Mr Dubovec* stated that if the MLWR was to describe what rights were carried in a negotiable document, it needed to do that very clearly. In relation to the MLST, he recalled that it operated with the term negotiable document, thus the term was known and using it in the MLWR might connect well with the implementation of the secured transactions law. He further noted that a definition of negotiable document might not be needed for the MLWR, and that in the MLST, a definition was included for the purpose of covering a variety of negotiable documents – warehouse receipts, bills of lading, delivery orders, and whatever other writings a jurisdiction treated as a negotiable document.

155. *Mr Budd* stated that negotiable document was an important concept within the MLST and, if the Working Group was striving to create harmony between the MLWR and existing UNCITRAL instruments, that was a strong argument in favour of retaining the notion of negotiable warehouse receipt.

156. *The Chair summarised the discussion. The Working Group agreed that it was necessary to describe the features of negotiability in the MLWR. Only at a later stage in the drafting process, the Group would consider what definitions needed to be included. The Chair noted that the Group needed to give further consideration to the issue of negotiability and its features as well as the existing doctrines in continental legal systems.*

v. Registration

Electronic registration systems for warehouse receipts

157. *The Chair* introduced the topic with reference to paragraphs 78 – 87 of Doc. 3, and then asked the Working Group whether the MLWR should prescribe a particular model for a State to establish and operate a registry for EWRs.

158. *Ms De Las Heras Ballell* noted that the Working Group ought to be careful not to prescribe a particular model that could be considered a specific technology or technology-based model, as the idea of technological neutrality applied. However, it might be useful to consider whether a particular registry, regardless of the model or design, should comply with specific minimum features to fulfil its function effectively.

159. *Mr Mukami* agreed that it was important not to prescribe or strongly limit the choices of the models available because the Working Group had to cater for different countries and environments. He emphasised that a prescription of that nature would limit the utility of the MLWR.

160. *The Chair summarised the discussion. The Working Group agreed that the MLWR should not prescribe a particular model for a State to establish and operate a registry for EWRs; rather, the model that a State was going to choose should comply with the functions that the registry should perform.*

161. *The Chair moved to the next question of what functions the registry should perform, noting that such functions could be, for example, that the issue and transfer of receipts might be effectuated only by entries in the registry.*

162. *Mr Riffard opined that the MLWR should promote a warehouse receipts system that was based on an electronic registry, which should play a maximum role, including the issuance, transfer and registration of security interests in the commodities.*

163. *Ms De Las Heras Ballell noted that, if the Working Group decided that the function of the registry was the issuance and transfer based on entries in the registry only, they opted for one of the possible models, namely a centralised registry. One of the consequences of a central-registry-based model was that all transfers were made nominative, and consequently negotiability by endorsement and transfer of possession would become irrelevant.*

164. *Mr Dubovec explained different transactions for which one or another model might be more appropriate, noting that, as there were a variety of transactions in the marketplace, the MLWR should not be too prescriptive. He pointed out that things changed quickly in this field, and it would be important for the Working Group to stay on top of the developments and reassess these issues towards the end of this first phase of the project.*

165. *Ms Ayala highlighted the importance to establish whether the registry should contain a receipt issued in electronic form or a digitalised receipt. She favoured that the MLWR would provide that the transfer, notification and all the transaction steps could be done in the registry, which would clarify the process and promote transparency and transferability of the title.*

166. *Mr Budd cautioned that, if it were possible to search a centralised warehouse receipt registry to find out what a particular person's holdings were, that person would surely not be doing business with the warehouses that were contributing that information.*

167. *The Working Group noted that further discussion was required regarding the functions that the registry should perform.*

Trading platforms

168. *The Chair introduced the topic with reference to paragraphs 88 – 94 of Doc. 3. She asked the Working Group whether any rules were needed in the MLWR to enable transactions with EWRs on platforms.*

169. *Mr Dubovec referred to exchanges where rights to goods in warehouses were traded based on contractual frameworks in the absence of any warehouse receipts law, and suggested that the Working Group consider how to structure the MLWR so that these transactions on platforms could benefit from the regime. Noting that there were a variety of transactions, he underlined that the MLWR should not be crafted very narrowly so as to inadvertently cause difficulties for platforms.*

170. *Mr Rutten described that both in India and Indonesia they operated warehouse receipts models outside of the law through contractual frameworks, in India with 3000 participating warehouses, but this was not desirable, and he would clearly prefer to operate within a legal framework. He reported that there were two ways to register priority rights in Indonesia, through*

a notary or a registration centre, yet none of them was efficient. Therefore, they set up their own electronic registration system. He noted that if instead they could rely on national law, it would be much easier to attract banks to their platform. Whenever a user on the platform approached a bank, the latter would ask its legal counsel to assess whether the rights under their contract system were enforceable – in India they were, but not in Indonesia.

171. *Ms De Las Heras Ballell* asked whether these platforms were simply a way of doing something when the legal framework was failing. Or, on the contrary, these platforms were one of the models in the market, and the MLWR should create an enabling legal framework permitting and promoting the different models that were already operating.

172. *Mr Rutten* replied that there were both legal and operational reasons for them to have their own warehouse receipts platform. If the law prescribed a single registry, it would make it difficult for exchanges to operate. He pointed out that laws and regulations should not make it impossible for ecosystems to create warehouse receipt systems, whereas enabling laws would make it more attractive.

173. *Mr Wilson* noted that in some economies, interoperability or communication functions existed between those platforms that were authorised to trade digital or tokenised assets. He queried whether, rather than focussing on the development of a registry itself, from the standpoint of the platform operators there just needed to be a framework for those platform operators to communicate effectively with one another. He suggested that the Working Group consider that question because they aimed to provide as much flexibility as possible to the different platform operators, while still capturing the transparency of the system as a whole.

174. *Mr Rutten* agreed with this suggestion as long as exchanges were not forced to share information. He highlighted that in practice the major problem was enforceability, as it could prove very difficult for banks to actually enforce their rights. Therefore, he underlined that the law should allow the operators of warehouse receipts flexibility to find practical solutions to the realities on the ground.

175. *Chair summarised the discussion. The Working Group agreed that the issues regarding the need for, and desirability of, rules enabling transactions with EWRs on platforms should be further explored.*

Electronic transfers: the mechanics

176. *The Chair* briefly introduced the topic and stated that the Working Group had already discussed the issues raised in this section.

Availability of information

177. *The Chair* introduced the topic with reference to paragraph 100 of Doc. 3. She asked the Working Group whether the registry should restrict access to information to interested parties, and how the registry should enforce any such access restrictions.

178. *Mr Dubovec* stated that the MLWR needed to provide for functional equivalence in a registry system and that accessibility of information should replicate what was currently available and customary in the paper context, while new technologies might display some more information to allow more transparency. However, the overarching principle should be confidentiality of information.

179. *Ms De Las Heras Ballell* queried to what extent the MLWR could enhance any of the characteristics of the market in view of new opportunities presented by technology. She suggested that the Working Group considered, beyond functional equivalence, what the new opportunities of technology were.

180. *Mr Rutten* explained the functioning of their warehouse receipt system, which was built for collateral management. He noted that when all required actions were undertaken correctly, with different parties putting in information, at a certain moment that information was complete and the warehouse operator could click a box to obtain an EWR.

181. *Ms Wehling* asked who would be the “interested parties”, referred to in the question, who should have access to the information contained in the registry.

182. *Mr Rutten* explained that they were obliged to generate general statistics and report it to the government regulator. Conversely, transaction-specific information was only available to the parties of a particular transaction. In their system, the owner of a warehouse receipt could initiate a search for finance, which he or she could choose to make private, meaning that it would be marked to a couple of banks only. He specified that only users who had unencumbered receipts could initiate such a request, whereas a bank could not verify whether a trader had unencumbered receipts. As long as the national legal framework did not require making all data searchable, they could protect the privacy of data. He emphasised that information should only be available to the people who needed it and they had to convince users to trust in their ability to keep information confidential; if there were legal protection of confidentiality, that would build more confidence in the system.

183. *The Chair summarised the discussion. The Working Group agreed that the registry should restrict the access to information. The Group agreed to examine in more detail what would be included in the black-letter rules of the MLWR with regard to the availability of information.*

Capturing information in an EWR

184. *The Chair* introduced the topic with reference to paragraphs 101 – 102 of Doc. 3. She asked the Working Group how the MLWR should ensure that EWRs might enable information to be captured and updated in a dynamic fashion.

185. *Ms De Las Heras Ballell* noted that this concerned many legal issues, such as who was the person in control, who was responsible for updating and providing the updated information, and what were the effects of a mistake. This was a new opportunity and therefore a new risk that EWRs created.

186. *Mr Dubovec* noted that this question related to the principle of functional equivalence. For instance, where the MLWR would conceptualise control as an equivalent of possession, it was important to ensure that a person who was claiming control over an EWR that was being updated automatically was not disqualified from claiming a particular protection that a person who was holding a paper receipt was entitled to.

187. *Mr Rutten* recalled that the Working Group had agreed that a warehouse receipt must include a description of the goods. He suggested rendering that description requirement dynamic by stipulating that the word “description” encompasses dynamic fields, and adding a footnote stating that the box to be filled out in a paper receipt could be a dynamic field in the EWR.

188. *The Chair summarised the discussion. The Working Group noted that it would examine in more detail what should be included in the MLWR with regard to capturing information in an EWR.*

With regard to the discussion on registration more broadly, the Working Group agreed that it was important to ensure both flexibility and practicability of the Model Law, and to design it sufficiently broad to accommodate any future technological developments.

vi. Execution and priority of security rights and liens

The warehouse lien

189. *The Chair* introduced the topic with reference to paragraphs 103 – 109 of Doc. 3. She asked the Working Group whether the MLWR should provide for a warehouse lien and what was needed to define the contours of this lien.

190. *Mr Tosato* explained that there were three main approaches: the UCC model, the civil law jurisdictions' model, and the English common law model. English common law provided no warehouse lien by law. Regarding the other two approaches the policy choices often seemed to be in favour of a lien.

191. *Mr Budd* stated that it was difficult to imagine an active warehouse industry without some type of lien that must be satisfied as a condition to releasing the goods. He underlined that it was very unlikely that a warehouse company would accept goods for storage without providing some form of security for payment of their services.

192. *Mr Rutten* described that all their contracts provided for liens and noted that, from a pragmatic perspective, if a lien were not created automatically by law, one would have to negotiate it. He concluded that it would be advisable to provide for such a warehouse lien in the law to avoid creating an environment where every single relationship had a different negotiated clause.

193. *Mr Riffard* pointed out that the Working Group needed to consider the nature of such a lien. He explained that in the civil law tradition, this lien was not a security interest created by the law, but rather the *droit de rétention*, meaning the right of the warehouse operator to keep the possession of the goods until he or she would be paid. This right would have top priority over any other creditors' rights.

194. *Mr Tosato* suggested that the Working Group invite the Secretariat to prepare detailed background information on the different options in terms of the scope and nature of the lien for the next session.

195. *Mr Dubovec* noted that this appeared to be another instance where the terms "lien", "assignment" and "negotiation" could have different meanings, and suggested that the Working Group focus on the warehouse operator's right which was twofold: to retain the goods and to sell them. The future MLWR provision did not need to label it a "warehouse lien" but could be explicit in terms of what was meant. Furthermore, he noted that a law might require a lien of the warehouse to be noted on the warehouse receipt, and invited the Secretariat to analyse whether this might be one of the items that needed to be reflected on the warehouse receipt.

196. *Mr Tirado* noted that it was usually not a retention of title but a retention of possession. He questioned whether this should be explained in a guide to enactment or included in the MLWR as a mandatory rule. He emphasised that if a lien was created by law this said little as to how high it was going to rank in a warehouse operator's insolvency. Conversely, if for example the warehouse operator by way of contract created a pledge, that ranked usually much higher than a retention of the possession of the asset, depending on the jurisdiction. Therefore, stipulating such a right in the law as a lien or as retention of possession might actually undermine the warehouse operator's right, and allowing the parties to agree on a different type of security right might be more effective.

197. *Ms Ayala* remarked that it would be important to determine what costs the lien should cover, noting that there were important costs for the administration of the merchandise in a warehouse, for the issuance of a receipt, and for the operation of a registry.

198. *Mr Budd* referred to the issue concerning the relative priority of a security interest and the possessory lien. He reported that this had recently been a problem in Pakistan and the only solution that remained in practice was that warehouses, as standard practice when holding goods that were pledged to banks, asked the banks to subordinate their rights to the warehouse lien.

199. *Mr Tosato* noted that, regardless of whether this matter would be addressed in the MLWR or a guide to enactment, the link between the warehouse lien and the warehouse's obligation to redeliver should be acknowledged, namely that the presence of an undischarged debt owed to the warehouse was usually a valid excuse for the warehouse to refuse redelivery.

200. *Mr Dubovec* remarked that in the absence of a rule under warehouse receipts law, the general Civil Code or other law that created a general lien of artisans would apply. He stated that the Working Group had an opportunity to clarify how the lien operated in the context of warehouses, and that Article 36 of the MLST dealt with it very blandly. He also noted that if the warehouse had to negotiate a subordination agreement this would entail transactional costs, which would not be the case if a warehouse lien were specified in the law.

201. *Mr Tirado* remarked that Article 36 of the MLST left it open to States to decide which preferential claims would be prioritised to the secured credit and that, therefore, it was a neutral provision. He enquired about the direction of the Working Group in the context of the lien or right to retention of the warehouse operator, and precisely whether they wanted to ensure that it was still left to the domestic legislation, but cautioning against too many priorities which might undermine the system.

202. *Mr Budd* noted that a domestic law implementing the MLWR could not modify the priorities established under the general security laws of jurisdictions. He suggested not assigning a priority to this lien right in the MLWR but rather state, in the commentary, that there existed other solutions to protect the right of the warehouse operator, in particular through contractual arrangements between the warehouse, the depositor and the banks as the holders of warehouse receipts to allow them to allocate priorities.

203. *Mr Dubovec* noted that it might be difficult for legislators to formulate legislative solutions based on reading the guide to enactment and therefore, if the Working Group was reluctant to include a specific rule in the Model Law, he suggested to, at least, include it in the MLWR in brackets. Otherwise, this complex issue might not be considered and addressed in the implementing law and therefore would remain unclear.

204. *Mr Rutten* queried whether it would be possible to strengthen the lien by recommending in the MLWR that the warehouse lien was automatically considered as a perfected right and move it up the ranks.

205. *Mr Tirado* explained that such a provision would not be helpful, as it departed from the assumption that the lien that existed had been created. However, what the MLST touched upon in Article 36 was a collision between preferential rights (rights created by the law) and security rights. Hence, the warehouse operator would have a perfected security right, but several laws might lend a higher priority to other rights. He added that, however, the MLWR might very well adopt the same solution as the MLST if the Working Group would not find another agreeable solution.

206. *Mr Tosato* noted that one of the weaknesses of some civil law systems was that, because the warehouse lien and the consensual security interest were structured in nature as completely different, subordination agreements were effectively made impossible.

207. *Mr Budd* replied to Mr Tosato that instead of a subordination clause in the warehouse receipt itself, the warehouse operator in finance transactions could ask the bank to guarantee the payment of storage charges in the event that the depositor or the transferee was unable or unwilling to pay.

208. *The Chair summarised the discussion. The Working Group agreed to defer the question of whether to follow the MLST's approach, namely to leave it open to the national law to decide which preferential claims would be prioritised over a security right, for further consideration. The Secretariat agreed to conduct research to identify where this type of priority stands in a number of jurisdictions for the next Working Group session, so that the Working Group could consider whether it was appropriate.*

Consensual security rights

209. *The Chair* introduced the topic with reference to paragraphs 110 – 119 of Doc. 3 and asked the Working Group to what extent the MLWR should incorporate the general regime for security rights established by the MLST.

210. *Mr Dennis* elaborated that the MLST did not distinguish between paper and electronic documents, but defined possession as actual possession of a tangible document. When the guide to enactment of the MLST was considered in 2017, some States argued that Article 11 of the MLETR made the concept of control the functional equivalence of possession for purposes of the MLST. However, the Commission decided that the guide should clarify that the definitions of tangible assets and possession only included negotiable instruments and documents in paper form. Furthermore, the guide to enactment of the MLST stated explicitly in paragraph 2(10) that States that wished to enact both Model Laws should consider the relationship between the two. Accordingly, the MLST and the guide to enactment left the question open as to whether Article 11 of the MLETR on the concept of control should be considered the functional equivalence of possession for purposes of secured transactions law. He noted that this would be helpful for the Working Group because they could consider the concept of control as the functional equivalent of possession and that would not be inconsistent with the MLST.

211. *Mr Dubovec* suggested including secured transactions rules in the MLWR based on the MLST, considering how they could be adapted more closely to warehouse receipts without departing from the MLST principles and approaches. Regarding the structure of the MLWR, he referred to the Geneva Securities Convention, which contained a chapter on collateralised transactions as a voluntary option for States, noting that a similar approach could be considered for the MLWR, which could signal that if a State had enacted a secured transactions law based on the MLST, the MLWR rules might not be needed.

212. *Mr Wilson* reported that in Latin America, in addition to issuing a warehouse receipt, when the stored goods were to be subject to a security interest, the warehouse also typically issued either a warrant (in South America) or a *bono del prenda* (in Mexico). A warehouse receipt in these jurisdictions was a negotiable document of title and therefore it could be transferred by endorsement, in parallel to this second document, the warrant or *bono del prenda*. Noting that this added uncertainty in the market, he suggested including a strong recommendation in the guide to enactment for States adopting an EWR system to abrogate these dual documents.

213. *Ms Neo* supported setting out the rules in the Model Law but at the same time giving States the option whether to adopt them, noting that the MLWR aimed to be as inclusive as possible so that it could be adopted even in States that had not adopted the same principles as the MLST.

214. *The Chair summarised the discussion. The Working Group agreed that the MLST would be taken into consideration for the provisions on security rights in the MLWR. The Working Group would further consider appropriate amendments to the MLST's rules to adapt them to the specific context of warehouse receipts.*

215. *The Chair* asked the Working Group whether the MLWR should expressly establish that a security right in a negotiable warehouse receipt extended to the tangible asset covered by the receipt, provided that the issuer was in possession of the asset, directly or indirectly, at the time the security right in the receipt was created.

216. *Mr Budd* proposed that the MLWR be elastic in terms of the underlying security issues and simply define the interest of the warehouse receipt holder in respect of the negotiable document and the underlying goods. He urged that the MLWR vest as much title as possible in the receipt and let the national law deal with how to treat that form of title when held by a secured creditor. He argued that if the Working Group tried to move beyond that, they would enter into secured transactions law which differed from the law on warehouse receipts.

217. *Mr Mukami* noted that different jurisdictions might have different approaches to this question and therefore suggested that the MLWR offer maximum flexibility to ease its implementation by States.

218. *The Chair summarised the discussion. The Working Group decided to give further consideration to this question. In view of the little time left, the Group agreed to leave the remaining paragraphs of this section for consideration at their next session and move directly to Item 6.*

Item 6: Organisation of future work

219. *The Chair* drew the attention of the Working Group to the proposed work plan for the period 2020-2022 as set out in Doc. 1. She noted that it was planned to complete the draft MLWR over the period 2020 to mid-2022. The work would take place through Working Group sessions and intersessional work. She suggested that the second Working Group session would take place on 10 – 12 March 2021 in the afternoons (CET), held in Rome and remotely.

220. *The Working Group agreed on the proposed dates for the second session.*

Item 7: Assignment of rapporteurs

221. *Ms Wehling* explained that the Secretariat would set up an informal drafting committee that would be tasked with preparing the first draft Model Law provisions concerning those aspects on which the Working Group reached consensus. In addition, the Secretariat would create an informal subgroup that would be tasked to prepare background information on selected technological aspects for the next session in March. She invited participants to express their interest in joining this subgroup.

222. *The Chair* noted that the Secretariat would start organising the additional intersessional work.

Item 8: Any other business

223. *The Chair* opened the floor for any additional comments from participants. She thanked all participants for their contributions to this first session and the constructive discussions.

224. *Mr Tirado* thanked the Chair and all participants for the productive and pleasant discussions, which brought a lot of information to carry the project forward. The next Working Group session was likely to take place remotely as well, but if participants were able and wished to participate in that session in person, the Secretariat would be grateful to host them and the session could be organised in a hybrid form.

225. *The Chair thanked again all participants and declared the session closed.*

ANNEX I**LIST OF PARTICIPANTS****EXPERTS**

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INDONESIA COMMODITY & DERIVATIVES EXCHANGE (ICDX)	Mr Lamon RUTTEN Chief Executive Officer
SECURED FINANCE NETWORK	Mr Richard KOHN Co-General Counsel
SMBC BANK INTERNATIONAL PLC	Mr Sean EDWARDS Senior Executive Director Head of Legal – EMEA Planning Department – Legal Group
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SECRETARIAT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)	Mr Ignacio TIRADO Secretary-General
	Ms Anna VENEZIANO Deputy Secretary-General
	Ms Philine WEHLING Legal Officer
	Ms Priscila ANDRADE Legal Officer

ANNEX II**AGENDA**

1. Opening of the session and welcome by the Secretary-General
2. Formal appointment of the Chair of the Working Group
3. Adoption of the agenda and organisation of the session
4. Preliminary considerations in relation to the work on a Model Law
 - a. Objectives of the Model Law
 - b. Alignment with existing international instruments
5. Consideration of the scope of the Model Law and issues to be covered
 - a. Scope
 - b. Content
6. Organisation of future work
7. Assignment of rapporteurs
8. Any other business