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**UNIDROIT Working Group on a Model Law on
Warehouse Receipts**

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ISSUES PAPER

1. This document provides a discussion of issues that the Unidroit Working Group on a Model Law on Warehouse Receipt may wish to consider at its third session.
2. The issues considered in this document were identified by either members of the Working Group during and/or after the first and second session, the Chair of the Working Group, or the Secretariat. This document does not intend to provide an exhaustive list of issues nor a full legal analysis of each issue. Rather, the purpose of the document is to provide a structure for the Working Group's deliberations at its third session.
3. The document retains a revised version of the parts of the Issues Paper from the first session ([Study LXXXIII - W.G.1 - Doc. 3](#)) relating to preliminary matters associated to the Model Law on Warehouse Receipts (MLWR) and the scope. The third part of this document relates to the content of the Model Law, and is divided into six sections:
 - i. Scope and general provisions
 - ii. Issuance of a warehouse receipt
 - iii. Transfer of warehouse receipts
 - iv. Format of warehouse receipts: single and double receipts
 - v. Electronic warehouse receipts
 - vi. Rights and obligations of the warehouse operator
4. The abovementioned sections i., ii. and iii. are to be considered in conjunction with the Preliminary Drafting Suggestion for the Model Law on Warehouse Receipts (Study LXXXIII - W.G.3 - Doc. 3), which contains drafting suggestions for the scope and general provisions (draft Chapter I); the issuance of a warehouse receipt (draft Chapter II); and issues that may need to be addressed concerning their transfer (draft Chapter IV).
5. Noting that the discussion of several other issues at the first and second session of the Working Group was not concluded and might require further deliberation, the Working Group members are invited to raise any of these matters during the course of the second session, with reference to [Study LXXXIII - W.G.1 - Doc. 3](#) and [Study LXXXIII - W.G.2 - Doc. 2](#).
6. The Secretariat is grateful to Mr Marek Dubovec, Kozolchuk National Law Center (NatLaw) as well as Working Group members Ms Paula María All, Mr Nicholas Budd, Mr Adam Gross, Ms Teresa Rodriguez De Las Heras Ballell, Mr Hiroo Sono and Mr Andrea Tosato for their contributions to this document.

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I. PRELIMINARY MATTERS

A. Background of the project

7. The first proposal for UNCITRAL to develop a Model Law on Warehouse Receipts was made at an UNCITRAL colloquium on secured transactions in 2017.¹ Following the discussion of this proposal at its 33rd session in 2018, Working Group VI (Security Interests) requested a mandate to develop a modern legal instrument for warehouse receipts. In view of this request, the UNCITRAL Commission, at its 51st session in 2018, invited the Secretariat of UNCITRAL to conduct exploratory and preparatory work on warehouse receipts.²

8. Thereafter, NatLaw carried out a feasibility study on possible future work on warehouse receipts,³ which the Secretariat summarised during the UNCITRAL Commission at its 52nd session, in July 2019.⁴ The Commission confirmed its decision to include the topic in its work programme but stated that further elements would need to be considered before initiating the work, namely how such work should be undertaken (whether by a Working Group or the Secretariat), the scope of the project, and the form of the resulting instrument.⁵ It requested the Secretariat of UNCITRAL to proceed with its preparatory work and to convene a colloquium with other organisations with relevant expertise, to consider the scope and nature of the work and possibly advance the preparation of initial draft materials.⁶

9. Following the 52nd UNCITRAL Commission session, its Secretariat invited the UNIDROIT Secretariat to consider joint work in the area of warehouse receipts, with particular focus on the possible drafting of a Model Law. On 26 March 2020, UNIDROIT and UNCITRAL co-organised a webinar to discuss the feasibility of formulating a Model Law on Warehouse Receipts with a broad audience of experts and organisations.⁷

10. Based on the conclusions and recommendations of the webinar, the UNIDROIT Secretariat proposed that the Governing Council, at its 99th session in April/May 2020, might recommend that the General Assembly include the drafting, jointly with UNCITRAL, of a Model Law on Warehouse Receipts as a new project with high priority status in the 2020-2022 Work Programme, subject to approval of a parallel mandate by UNCITRAL's Commission. The Council unanimously endorsed this proposal.⁸

11. A project proposal consistent with the one submitted to the Governing Council at its 99th session in April/May 2020 was submitted by the UNCITRAL Secretariat to the Commission at

¹ UNCITRAL Fourth International Colloquium on Secured Transactions (15-17 March 2017, Vienna), available at https://uncitral.un.org/en/colloquia/security/papers_2017. For details on the proposal see Dubovec and Elias, A Proposal for UNCITRAL to Develop a Model Law on Warehouse Receipts (28 June 2017).

² Report of the United Nations Commission on International Trade Law, Fifty-first session (25 June-13 July 2018), para. 253(a), available at <https://undocs.org/en/A/73/17%20>.

³ UNCITRAL, Warehouse receipts: Developing an UNCITRAL Instrument on Warehouse Receipts, 2019, available at https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf.

⁴ Report of the United Nations Commission on International Trade Law, Fifty-second session (8-19 July 2019), para. 194, available at <https://undocs.org/en/A/74/17>.

⁵ *Ibid.*, para. 195.

⁶ *Ibid.*, para. 196.

⁷ The Summary Report of the UNCITRAL/UNIDROIT Webinar on Warehouse Receipts (26 March 2020) is available at <https://www.unidroit.org/english/news/2020/200326-warehouse-receipts/report-e.pdf>.

⁸ Report of the UNIDROIT Governing Council, 99th Session (April/May 2020), Doc. C.D. (99) A.8, para. 21, available at <https://www.unidroit.org/english/governments/councildocuments/2020session/cd-99-a-08-e.pdf>.

its 53rd session held virtually in September 2020 for approval.⁹ The proposal received very positive reactions from the delegations and was approved by the Commission without amendments.

B. Format and title of the future instrument

12. The Model Law shall consist of a set of black letter rules. In addition, once the project is successfully completed, consideration will be given to proposing complementary work on a guide to enactment/user guide, including commentaries on the model provisions as well as on secondary legislation that may be deemed necessary to implement the Model Law at the country level.

13. It is suggested that the formal title of the future instrument will be the 'UNCITRAL/UNIDROIT Model Law on Warehouse Receipts'.

C. Target audience

14. The Model Law will be a standalone instrument for adoption by States seeking to reform their domestic legislation to introduce or modernise warehouse receipt systems. As consistent with all UNCITRAL and UNIDROIT instruments, the Model Law should be capable of being adopted by both common law and civil law jurisdictions.

D. Methodology and timeline for the project

15. The project is a joint UNCITRAL/UNIDROIT project consisting of two phases. First, UNIDROIT leads the joint preparatory work through a UNIDROIT Working Group that is developing a first comprehensive draft for a Model Law on Warehouse Receipts over the period 2020-2022. Once completed by the UNIDROIT Working Group, the draft Model Law shall be submitted for intergovernmental negotiations through an UNCITRAL Working Group.

16. Under the guidance of the Chair of the UNIDROIT Working Group, Professor Eugenia Dacoronia, the Working Group is undertaking its work in an open, inclusive and collaborative manner. As consistent with UNIDROIT's practice, the Working Group has not adopted any formal rules of procedure and seeks to make decisions through consensus.

17. The Working Group meets twice a year for two-three days. Meetings take place in Rome, unless external funding is provided to hold a meeting in a different location. Meetings are held in English without translation. Remote participation is possible, although experts are expected to attend in person if circumstances permit.

18. The tentative calendar for the implementation of the project anticipated the preparation of the first draft for the proposed Model Law over four in-person sessions 2020-2022, followed by the adoption by the Governing Council of the complete draft to be sent to UNCITRAL at its 101st session in May 2022:

- (a) Preparation of the first draft for the Model Law over four in-person sessions 2020-2022
 - i. First session: December 2020 (hybrid)
 - ii. Second session: March 2021
 - iii. Third session: September 2021
 - iv. Fourth session: early in 2022

⁹ UNCITRAL, Possible future work on warehouse receipts, Fifty-third session (6-17 July 2020), UN Doc. A/CN.9/1014, available at <https://undocs.org/en/A/CN.9/1014>.

- v. It is envisaged that remote meetings may be conducted when deemed necessary, in between in-person sessions. Given the extraordinary circumstances, one or more of the in-person meetings may be replaced by remote webinars.
- (b) Consultations and finalisation: first half of 2022
 - (c) Adoption by the Governing Council of the complete draft to be sent to UNCITRAL at its 101st session in May 2022.

19. However, discussions of the Working Group thus far have revealed the existence of structural differences of approach between different legal families and traditions concerning various key aspects of the design of the system of warehouse receipts. Addressing these differences, in a time when in-person meetings are restricted, pose a challenge to the initial set of dates. In light of these observations, and following consultations with UNCITRAL, it will be proposed to the Governing Council at its 100th session on 22-27 September 2021 to grant the Working Group an additional year to finalise a complete draft Model Law text that, including best practices, would be generally suitable for any jurisdiction's legal context. This extension of one year would accommodate well with the envisaged schedule of working group time available in UNCITRAL for the second part of the project.

E. Composition of the UNIDROIT Working Group

20. As consistent with UNIDROIT's established working method, the Working Group is composed of experts selected for their expertise related to warehouse receipt systems. Experts participate in a personal capacity and represent different legal systems and geographical regions. The Working Group is composed of the following ten members:

- Eugenia Dacoronia, Professor of Civil Law, University of Athens (Chair) (Greece)
- Paula María All, Professor of Private International Law, Universidad Nacional del Litoral (Argentina)
- Nicholas Budd, former partner and head of the Trade & Commodity Finance Groups, White & Case (France)
- Adam Gross, Director, Darhei Noam Limited (United Kingdom)
- Keith Mukami, Director, Head of Africa: Banking & Regulatory, CMS-RM Partners (South Africa)
- Dora Neo, Associate Professor and Director, Centre for Banking & Finance Law, National University of Singapore (Singapore)
- Jean-François Riffard, Professor of Civil Law, University Clermont Auvergne (France)
- Teresa Rodriguez De Las Heras Ballell, Associate Professor of Commercial Law, Universidad Carlos III de Madrid (Spain)
- Hiroo Sono, Professor of Law, University of Hokkaido (Japan)
- Andrea Tosato, Associate Professor of Commercial Law, University of Nottingham (United Kingdom); Lecturer in Law, University of Pennsylvania (USA).

21. This being a joint project, the Secretariats of both UNCITRAL and UNIDROIT participate in the Working Group meetings.

22. UNIDROIT has also invited a number of intergovernmental organisations and public sector stakeholders with expertise in the field of warehouse receipt systems to participate as observers in the Working Group. Participation of these different organisations and stakeholders will ensure that different regional perspectives are taken into account in the development and adoption of the

instrument. It is also anticipated that the cooperating organisations will assist in the regional promotion, dissemination and implementation of the Model Law once it has been adopted. The following organisations and public sector stakeholders have been invited to participate as observers in the Working Group:

- Food and Agriculture Organization of the United Nations (FAO)
- International Fund for Agricultural Development (IFAD)
- Organization of American States (OAS)
- Organisation for the Harmonisation of Business Law in Africa (OHADA)
- United Nations Conference on Trade and Development (UNCTAD)
- United States Department of State
- World Bank Group (WBG).

23. Finally, UNIDROIT has also invited a number of industry associations and other private sector stakeholders to participate as observers in the Working Group, to ensure that the Model Law will address the stakeholders' needs in facilitating the use of warehouse receipts. The private sector stakeholders will also assist in promoting the implementation and use of the Model Law. The following stakeholders have been invited to participate as observers:

- Association of General Warehouses, Mexico
- Bsystems Limited
- GrainChain Inc.
- Indonesia Commodity & Derivatives Exchange
- Information Services Corporation, Canada
- International Warehouse Logistics Association
- Kozolchyk National Law Center (NatLaw)
- Secured Finance Network
- SMBC Bank International PLC
- VOCA Consult.

F. Relationship of the Model Law with existing international instruments

24. The Model Law's scope will focus on the private law aspects of a warehouse receipt system (see Section II "Scope and structure of the Model Law", for more details, below). There are a few international conventions that, while not yet in force, address some relevant aspects, as well as two international model laws that are particularly relevant for certain aspects of the Model Law. It is suggested that the terminology and concepts used in the Model Law on Warehouse Receipts be harmonised with those of these existing instruments, and that uniformity and consistency with their provisions ought to be ensured.

25. The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules)¹⁰ establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract for door-to-door carriage that includes an international sea leg. Importantly, it is the only international convention that deals expressly with negotiable documents (including in electronic form).

¹⁰ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (adopted in 2008, not yet entered into force), available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>.

26. The United Nations Convention on International Bills of Exchange and International Promissory Notes¹¹ deals extensively with the transfer and endorsement as well as with the protection of the holder of such documents. In view of the Model Law on Warehouse Receipts, it is useful to note that the Convention's rules have generally been deemed acceptable by States thus far.

27. Lastly, if the Working Group eventually decides to include provisions on the warehouse contract in the Model Law itself rather than in a guide to enactment – a question that will need careful consideration during the Working Group's discussions – then the United Nations Convention on Liability of Operators of Transport Terminals¹² should also be taken into consideration. While this Convention has not entered into force either, it provides an indication of what has been deemed acceptable to States in terms of international harmonisation with regard to liability.

28. An international model law that is particularly relevant for specific aspects of the Model Law is the UNCITRAL Model Law on Secured Transactions (MLST), 2016.¹³ Notably, as part of any warehouse receipts reform, attention should be paid to the secured transaction framework. This is primarily to ensure that transfers of warehouse receipts for purposes of creating security rights are coordinated with the third-party effectiveness (perfection) and priority regime set forth in the relevant secured transaction legislation. The UNCITRAL Model Law on Secured Transactions recognises types of assets called "negotiable documents", which encompass warehouse receipts, for which it sets out some specific rules.

29. The other particularly relevant instrument is the UNCITRAL Model Law on Electronic Transferable Records (MLETR), 2017.¹⁴ This Model Law aims to enable the legal use of electronic transferable records both domestically and across borders. It applies to electronic transferable records that are functionally equivalent to transferable documents or instruments, such as warehouse receipts. Such electronic transferable records are increasingly relevant for countries seeking to establish a market for electronic warehouse receipts (EWRs).

II. SCOPE AND STRUCTURE OF THE MODEL LAW

30. With regard to the scope of the Model Law, the experts who participated in the above-mentioned webinar on 26 March 2020, as well as the Secretariats of both UNCITRAL and UNIDROIT, agreed that a Model Law should focus on the private law aspects of the warehouse receipt system. Hence, the Secretariat's proposal to the UNIDROIT Governing Council in April/May 2020 suggested the joint drafting of a Model Law on the private law aspects of warehouse receipts. The proposed scope was unanimously supported by the Governing Council members, as it was by the UNCITRAL Commission.

31. Accordingly, the Model Law should cover the private law aspects of warehouse receipts, covering both electronic and paper, negotiable and non-negotiable receipts. It should seek to provide a comprehensive instrument that covers all the essential aspects necessary to regulate the private law side of a system of warehouse receipts.

¹¹ United Nations Convention on International Bills of Exchange and International Promissory Notes (adopted 1988, not yet entered into force), available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/x_12_e.pdf.

¹² United Nations Convention on Liability of Operators of Transport Terminals (adopted 1991, not yet entered into force), available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ott_e.pdf.

¹³ UNCITRAL Model Law on Secured Transactions (2016), available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf.

¹⁴ UNCITRAL Model Law on Electronic Transferable Records (2017), available at https://uncitral.un.org/en/texts/e-commerce/modellaw/electronic_transferable_records.

32. During its second session, the Working Group agreed on the following list of aspects to be covered by the Model Law:

- a set of definitions of the main concepts;
- the legal status and format of the receipt;
- the form and the content requirements of the receipt;
- the contractual rights and obligations of the parties, limited to the extent required by the instrument itself;
- registration of receipts upon their issuance;
- the negotiability and the means of transfer of the receipts;
- amendments to warehouse receipts, including dynamic updating of EWRs;
- the substitution and removal of goods from the warehouse, and the termination of storage; and
- aspects concerning creation and third-party effectiveness of a security right in warehouse receipts (and stored goods) as well as relevant priority and enforcement-related issues.

33. The main focus of the Model Law will be on the financing function of warehouse receipts, whereas the contractual rights and obligations of the parties will only be covered to the extent required for the functioning of the Model Law. The contractual rights and obligations of the different parties engaging in the practice of a warehouse receipt system could be explained and illustrated in a guide to enactment/users guide or other accompanying document. Furthermore, it should be underlined that technology shall permeate the entire instrument.

34. The regulatory aspects should be touched upon only when strictly necessary. The institutional and regulatory framework of the operation of warehouses could be addressed in an accompanying document, which should be considered after completion of the Model Law.

35. During its second session, the Working Group agreed on the preliminary structure for the MLWR included in Annexe I to this document.

III. CONTENT OF THE MODEL LAW

A. Scope and general provisions

36. Based on the Working Group's agreement concerning the aspects to be covered by the Model Law as well as its structure, the drafting suggestions for Chapter I "Scope and general provisions" in Study LXXXIII – W.G.3 – Doc. 3 have been prepared for consideration by the Working Group at this third session.

Recommendation for the Working Group:

- *The Working Group is invited to consider the drafting suggestions for Chapter I together with the items for discussion included in Study LXXXIII - W.G.3 - Doc. 3, pp. 2-6.*

B. Issuance of a warehouse receipt

37. Based on the Working Group's discussion of the drafting suggestions that were presented at its second session for Chapter II "Issue of a warehouse receipt", the draft provision for that Chapter have been revised for consideration by the Working Group at this third session.

Recommendation for the Working Group:

- *The Working Group is invited to consider the revised drafting suggestions for Chapter II together with the items for discussion included in Study LXXXIII - W.G.3 - Doc. 3, pp. 7-18.*

C. Transfer of warehouse receipts

38. During the second session of the Working Group, draft provisions for Chapter IV on the transfer of warehouse receipts were presented as examples of issues that may need to be addressed in the Model Law, while it was highlighted that the Working Group would need to find a “legal functional equivalent” to express those concepts in a manner broadly acceptable among legal systems. Based on the Working Group’s deliberations, those draft provisions were revised as included in Study LXXXIII – W.G.3 – Doc. 3 for consideration by the Working Group at this third session.

Recommendation for the Working Group:

- *The Working Group is invited to consider the revised drafting suggestions for Chapter IV together with the items for discussion included in Study LXXXIII - W.G.3 - Doc. 3, pp. 19-30.*

D. Format of warehouse receipts: single and double receipts

39. At its first session, the Working Group could not reach a decision on whether the MLWR should accommodate both single and dual receipts, or opt for one of these approaches. Therefore, the Group agreed to examine the functional reasons for the use of the dual system in numerous countries, and to further analyse the reasons to consider the single warehouse receipts system as the preferred option ([Report of first session](#), para. 63).

40. First, the Secretariat prepared a comparative review of the law and practice in 40 countries concerning single and dual warehouse receipts. This review showed that the countries can be divided into four groups:

- i. Countries that have adopted single warehouse receipts, including common law jurisdictions and some civil law jurisdictions, such as China¹⁵, Germany¹⁶, and Japan.¹⁷
- ii. Countries that have adopted dual warehouse receipts, mostly in Latin America. The two instruments are generally referred to as the certificate of deposit (“certificado de depósito”), and pledge bond (“bono de prenda”) or warrant (“warrant”).¹⁸
- iii. Countries that allow for both single and dual warehouse receipts, such as Kazakhstan¹⁹, Kyrgyzstan²⁰, Russia²¹, and Ukraine.²²

¹⁵ Civil Code [China], Articles 908, 909, available in Chinese at <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>; in English at http://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html.

¹⁶ Commercial Code (Handelsgesetzbuch) [Germany], Section 475c(1), original in German at <https://www.gesetze-im-internet.de/hgb/>.

¹⁷ See below B.1.(3).

¹⁸ See, for example, Law 9643 [Argentina], Article 6, available in Spanish at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/37048/texact.htm>; Law 18690 [Chile], Articles 4 and 5, available in Spanish at <https://www.bcn.cl/leychile/navegar?idNorma=30072>; General Deposit Warehouses Law (Ley de Almacenes Generales de Depósito) [Costa Rica], Article 15, available in Spanish at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=8185&nValor3=86568&strTipM=TC.

- iv. Countries that have adopted dual warehouse receipts as the general rule, but single warehouse receipts for certain commodities and/or exchange markets. This has been adopted by legislation or in practice in countries such as France²³ and the United Arab Emirates.²⁴

41. The review revealed that neither dual nor single warehouse receipts may be considered the predominant model, but that there is a subtle trend of increasing acceptance of single warehouse receipts on the legislative level. First, some countries have adopted single warehouse receipts in addition to, or as the replacement of, dual warehouse receipts. Secondly, the exchange markets in some dual format countries have implemented single warehouse receipts on electronic trading platforms. The summary report of this review of country law and practice can be found in [Annexe II](#).

42. Based on the initial review, a detailed study of these issues is currently being carried out as requested by the Working Group. It is envisaged to present the findings to the Working Group for consideration at its fourth session.

E. Electronic warehouse receipts

43. The Technology Subgroup conducted intersessional work in preparation for the third Working Group meeting in September. Certain technology-related issues discussed by the Working Group during its second meeting in March required further elaboration for the Working Group to consider policy options and adopt decisions in subsequent meetings. For the Technology Subgroup to carry out the intersessional work, a questionnaire was prepared and circulated. Comments and replies from the members of the Subgroup were collated for this section.

1. Technological models and their legal implications

44. The Working Group agreed on adopting a medium-neutral approach for the MLWR, and that the MLWR should not set out specific requirements for EWRs for particular technologies (see the [Report of second session](#), at paras. 87-89). However, the variety of technological solutions for the digital issuance, transfer or encumbrance of EWRs might have different legal implications which differ for a tokenised versus a registry-based model and should be taken into consideration. The key issue for the Working Group to consider is then whether the Model Law should consider specific rules for enabling the development and the deployment of different technological models.

45. At present, primary technological models operating in the market belong to two main categories: registry models and token-based systems. Within each category, various sub-models are possible: single centralized or multiple registries, general registries or sector-specific registries, public or private registries, etc. It should be highlighted that in many jurisdictions (all African EWR software solutions) EWR models for issuance, transfer or encumbrance are closely integrated to, or interfacing with, commodity exchange-trading platforms.

46. Both models free warehouse receipts from the paper medium and are data-based. But there are differences. Whereas registry-based models replace the actions of issuance and transfers

¹⁹ Civil Code [Kazakhstan], Article 797, available in three languages at <https://adilet.zan.kz/eng/docs/K940001000>.

²⁰ Civil Code [Kyrgyzstan], Article 906, available in Russian at <http://cbd.minjust.gov.kg/act/view/ru-ru/5>.

²¹ Civil Code [Russia], Articles 912-914, available in Russian at <https://legalacts.ru/kodeks/GK-RF-chast-2/>.

²² Civil Code [Ukraine], Articles 961-965, available in Ukraine at <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

²³ See below B.1.(1).

²⁴ See below B.2.

of the warehouse receipt by registration in a (single or multiple) centralised registry, token-based models might, to a certain extent, reproduce transfers of conventional paper-based warehouse receipts with the new parameters of 'control mechanisms'. Even if these two models are the ones currently in operation, technological progress and business evolution can trigger the emergence of new models in the near future. Therefore, it is recommended that the Working Group decide whether enabling provisions are needed to ensure that the envisaged model legal regime is conducive to any future development in technological models for EWRs.

47. An enabling legal framework can be devised from two perspectives: positive enabling provisions to cover current models and future ones, or avoiding model-specific provisions that might raise obstacles for the introduction of new models in the future. The latter approach should prevent legal obsolescence and innovation stifling. The downside of this approach might be its high degree of generality which would not provide sufficient guidance to legislators.

48. The following paragraphs describe existing technological solutions for EWRs with a view to assessing whether these solutions reveal different legal implications. A description of current technological models helps to better understand the state of play and to identify possible legal issues.

49. To date, registry-based models are the most widespread. The case of Argentina illustrates a registry-based model for EWRs.

The electronic warrant system has been in operation since 2020 (Disposición N° 76/2019 de la Subsecretaría de Mercados Agropecuarios²⁵). The Electronic Warrant is an instrument that allows the owner of goods to give their custody to a duly authorized issuing Company ("Warranteras"). The platform allows the issuance of warrants and certificates of electronic deposits. It must be initiated through the single window of the "Federal Administration of Public Revenues" (AFIP), and the date is validated with the Single Tax Identification Code (CUIT)²⁶ and the Fiscal Code. Once entered into the system, the Company issuing the warrant will be responsible for issuing the documents leaving the same pending for the signature of their clients. The system is fed by information from the AFIP as well as from that which will be generated daily by the user with data from the warehouses, on insurance, products and qualities.

50. A detailed explanation of the South Africa EWR model provides helpful guidance.

South Africa has had EWRs since the early 2000s. The South African model has the appearance and functionality for the users similar to an online bank account. Each type of user – storage operator,

²⁵ See <http://www.boletinoficial.gob.ar/detalleAviso/primera/221255/201911114> (Decree N° 1.131 of 28/10/2016 established the legal value of the original of digitally signed electronic documents, providing that all documents and records generated in electronic format are considered original, and have the same effectiveness and probative value as their equivalents in paper format (art. 293 and cc. of Civil and Commercial Code). The recital of Regulation N° 76/2019 explains that it is necessary to modernize the methodology for issuing certificates of deposits and warrants and points out that, since the issuance of Decree N°1.131/2016, digitally signed electronic documents have the same efficacy and evidentiary value as their paper equivalents. Since the entry into force of Regulation N° 76/2019, authorised entities will not send monthly affidavits or record their operations daily since the emission data will be stored in the electronic system. This will improve the control and collection of statistical data by the Sub-secretariat of Agricultural Markets.

²⁶ The Federal Administration of Public Revenue assigns a unique number (C.U.I.T - *Clave Única de Identificación Tributaria*) to each taxpayer enrolled. The registration process differs between natural or legal persons. The individual (natural person) is registered at the agency corresponding to the fiscal domicile (in which the economic activity is performed) and provides the necessary information and documents to prove identity (birth date, ID N°) and domicile (certificate by a notary public, title deed or rental agreement, bank account or credit card statement, municipal permit, among others). In the case of legal persons, the request for registration must be done electronically, by providing the identifying information for the partnership (registered name, legal domicile and any other related data), information about the members (authorities, equity shares, partners and shareholders), and any other information related to the activity performed, taxes and fiscal domicile. The representative will appear in person at the AFIP premises in order to provide all the necessary documentation to prove the existence of the legal person, which will vary according to the legal nature (partnership business, trust, permanent establishment, etc.). After having verified the documents submitted and accepted the registration, the AFIP will provide the CUIT assigned to said legal person.

financier, depositor, broker, commodity exchange, regulator – has their own account. The account is based on a unique ID and accessed via robust security protocols, e.g. multi-factor authentication. Once a user has authenticated their identity and entered their account environment, they may perform actions pertinent to the user type.

A storage operator can among others issue a new EWR, modify an outstanding receipt, and cancel the receipt after collection of the goods. The issuance of the receipt is based on completing the relevant fields of the warehouse receipt 'master' (i.e. the warehouse receipt template). In their account environment, the storage operator can view the portfolio of all the receipts they have issued and view the details of each receipt in turn. This means they can track who is the legitimate holder of the receipt for purposes of authenticating the identity of the party entitled to delivery.

A depositor can view the EWRs issued in their name within their account, can request to encumber the receipt as collateral security to a financial institution, can request to transfer the receipt to a buyer, a broker or a commodity exchange (the latter two in the event of a transaction conducted through the exchange), can split the receipt into two, and can dematerialise or rematerialize the receipt from paper to electronic and vice versa.

In the case of a transfer, the purchaser – a buyer, broker or commodity exchange – must accept the request for transfer for the transfer to be completed. The EWR is then credited to its account.

In the case of an encumbrance, the lender must accept the request for encumbrance for it to be completed. The EWR then appears as an encumbered security in its account alongside all other receipts that have been encumbered. Once encumbered, the EWRs cannot be transferred without the financial institution authorization releasing the encumbrance (if the loan is repaid), partially releasing the encumbrance (if there is partial repayment) or seize and liquidate the receipt (if a default takes place).

Through the system, actors can view a complete audit trail of all actions relating to a pertinent receipt – i.e. a depositor, a storage operator of a receipt for a commodity they store, a financier for a receipt that has been encumbered to them.

In the case of South Africa, a subsidiary of PwC operates a call centre for users to conduct actions with EWRs without having to set up their own account. The PwC subsidiary also has responsibility for control and confidentiality of the database, as opposed to the technology operator, given the high sensitivity of the market participants to the potential disclosure of their trading positions.

51. The South African EWR technology has subsequently been exported to several other African countries – Uganda (now curtailed), Rwanda, Nigeria and – potentially – Zambia (subject to the Zambian Commodity Exchange becoming active).

The technology used in Malawi incorporates these features and includes a few extra. It includes a maker-checker function – i.e. for any action conducted through the technology, two people within the organisation must independently confirm the action: the primary actor (e.g. the warehouse manager) and a second actor (e.g. the finance or admin manager). The Malawi technology also includes functionality to dynamically update the quality of the goods in storage based on acceptable moisture loss and other parameters, to dynamically update the goods' value the receipt linked to a pricing reference, and maintain an audit trail of fumigation, inspection and other actions relating to goods under storage.

52. The Nigerian model serves as an illustration of a token-based model on a blockchain scheme.

53. In 2020 Nigerian commodities exchange Afex has announced plans to introduce a blockchain-based application for warehouse receipts as part of efforts to reduce fraud for funders and increase liquidity for African farmers. The Warehouse Receipt Check solution will be available with Afex's existing electronic warehouse receipts system.

The new blockchain solution, which has been developed by trade finance fintech Trade Finance Market (TFM), is aiming to support this process and reduce the risk of warehouse receipt fraud, by encrypting the receipts and storing them on the blockchain.

Double or triple financing of warehouse receipts is a significant problem globally. Chain of title is difficult to establish as lenders cannot share data with each other due to compliance issues. Centralised databases do not exist, are untrusted and can be hacked. A lender therefore has no way of knowing if a warehouse receipt has already been pledged as collateral for a loan. By using the blockchain solution, banks and other lenders can check to see if a warehouse receipt has been previously financed. No single entity owns the database and the blockchain is beyond the influence of the contract's participants. Data is protected and is tamper resistant once on a decentralised blockchain.

In 2018, in another initiative seeking to streamline the process of financing smallholder farmers, [Afex partnered with Sterling Bank and blockchain-firm Binkabi](#) to launch a blockchain-based commodity finance programme. As part of that programme, warehouse receipts are converted into tokens, which can be traded on Binkabi's blockchain platform and used as collateral.²⁷

Binkabi's platform uses blockchain-based smart contracts to secure and automate commodity trading and financing. Through the new programme, a farmer can deposit commodities at one of Afex's warehouses throughout Nigeria, which in turn will issue a warehouse receipt representing the ownership of the commodity. This warehouse receipt will then be converted into a token – what Binkabi calls the "tokenisation of commodities"²⁸ – which can be traded on Binkabi's blockchain platform and used as collateral. The whole process, including disbursing funds, monitoring performance and managing repayment is automated through Binkabi's platform. The idea is that, by adopting advanced technology, the platform will lower the entry barrier for people wanting to trade commodities: instead of depending on brokers, the decentralised platform will be a place for anyone, anywhere in the world to trade commodities in the form of digital tokens.²⁹

54. Token-based models seem to work as a mimetic digital equivalent of paper-based warehouse receipts insofar as the token might circulate, and possession (or its equivalent) entitles the holder to exercise the right represented by the warehouse receipt/token. Registry-based models entirely 'dematerialise' the title (warehouse receipt) which become simply a set of information (issuer, holder, secured creditor, etc). But in both cases, EWRs are essentially based on information (units of data), either registered in a registry or contained by the token itself.

55. Where control is used as a substitute for possession, there must be a method for identifying the person in control of the EWR. Possible approaches might be described separately or be, on the contrary, specific manifestations of a general clause: the token model, where identification is in the EWR itself and changes of holders are noted directly in the EWR; or the registry model, where identification is in a separate independent third-party registry.³⁰

Recommendation for the Working Group:

- *The Working Group is invited to discuss two different policy and drafting options: first, formulating medium-neutral model-agnostic concepts for EWRs and paper receipts, so they can accommodate both modalities and future innovations; second, describing differently and in a more specific way the methods applicable to each EWR model – a registry and token with the associated aspects, such as the control and access rights.*

2. Concept of control

56. During its second meeting, the Working Group invited the experts to prepare a brief overview of the different models regarding the concept of control, which could be described in the accompanying guide (see the [Report of second session](#), at para. 84).

²⁷ Available at <https://www.gtreview.com/news/africa/nigerias-afex-to-roll-out-blockchain-solution-for-warehouse-receipts/>.

²⁸ See <https://intlbn.com/impact-of-tokenized-commodities-in-the-middle-east/>.

²⁹ Available at <https://www.gtreview.com/news/africa/nigerian-bank-commits-to-financing-tokenised-commodities-on-blockchain/>.

³⁰ UNCITRAL, A/CN.9/WG.IV/WP.115, paras. 45 - 48.

57. Currently, the draft MLWR does not provide a specific method for establishing control of EWRs. The Working Group agreed to leave this aspect open to accommodate different mediums that facilitate transfers of EWRs, as well as different approaches to the concept of control. Consistent with Art. 10 of the MLETR, the current version of draft Art. 9 “Electronic warehouse receipts” of Ch. II for the MLWR contemplates control as the sole method of transferring EWRs, including for the purpose of perfecting security rights. The same article also sets forth general conditions for control, including that a reliable method is used to render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity.

58. The concept of control first emerged to facilitate transfers of investment securities, which was subsequently adapted to other types of assets, including bank accounts, chattel paper, and documents of title. It also underpins a transfer mechanism for digital assets within the UNIDROIT project to develop principles of private law for digital assets. However, there is no singular notion of control, the requirements of which vary and depend on the nature of the asset and how it is held (e.g., in an account with an intermediary). The subsequent paragraphs describe and explain some of the current models.

Uniform Commercial Code (UCC)

59. UCC § 8-106 provides for control over investment securities. In this context, the key to exercising control is the right of the secured creditor to dispose of the collateral without further action by the debtor. This is also the approach for the perfection of security interests in bank accounts under UCC 9 as well as the UNCITRAL secured transactions instruments.³¹ There is no requirement, however, that the secured creditor have the exclusive right to dispose of the collateral. The debtor could continue to have the right to dispose of the collateral without preventing the secured creditor from exercising control. This is particularly necessary in financing transactions where the debtor needs access to its operating bank account to pay business expenses.

60. An EWR may be held in an account with an intermediary who facilitates trading on commodity exchanges. For instance, a warehouse receipt may be credited to a commodity account anticipating its delivery to a trader in settlement of a futures contract (though, this type of settlement is not common in futures). If a warehouse receipt is held as such, the concept of control developed for financial instruments/investment property would be applicable. However, these are matters of secured transactions laws (note that the UNCITRAL MLST does not specifically deal with these types of assets and transactions), which would extend beyond the mandate to develop a model law on warehouse receipts. In these transactions, the warehouse receipt is not held to deal with the commodity, but to settle a financial transaction.

61. In 2003, the UCC was amended to provide specific rules for establishing control over electronic documents of title, including EWRs. To accomplish the equivalent system for electronic documents of title, UCC 7 adapted the concept of control from UCC 8 for investment securities in the indirect holding system. The exclusivity of the rights of the person who purports to hold control may vary depending on the type of an asset and how it is held. While for warehouse receipts the debtor should not have the right to deal with the receipt, as that is not customary in the industry, a person who has a securities account with an intermediary may need to have the right to deal with those securities. Thus, the UCC 7 notion resembles what occurs with possessory pledges of paper receipts where the debtor practically loses any power to deal with the receipt. A person has control of an EWR for UCC 7 purposes “if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic

³¹ See e.g. the Legislative Guide on Secured Transactions, p. 50, para. 81 (“In general, a secured creditor is deemed to have control of an asset if it has the contractual right to direct the disposition of the asset.”).

document was issued or transferred.” Such a system exists when it establishes a “single authoritative copy [...] which is unique, identifiable and [...] unalterable.”

62. There are multiple ways to meet this standard. One way to establish the single authoritative document is to have a single custodian of the electronic record that enters all transfers of the document and identifies the person in control on its records.³² In such a system, the person in control notifies the custodian of any transfer or authorised change in the document, who then modifies its records appropriately and notifies the person in control and other relevant parties of the action. This might be the case of a system relying on a centralised registry operated by the government or a platform/exchange for the trading of EWRs. However, outside of these centralised and quasi-centralised systems, the single authoritative copy requirement could be troublesome for systems relying on blockchain where it might be challenging to identify a single authoritative copy.

European Union (EU)

63. The Financial Collateral Directive in the EU, by contrast, provides for a “negative” concept of control. This means that control is exercised if the debtor is stripped of its right to dispose of the collateral. This interpretation relies on Recital 10, which states that the Directive covers “only those financial collateral arrangements [that] provide for some form of dispossession”. This conclusion is supported by a recent decision by the European Court of Justice, which ruled that control may only be exercised where the debtor is deprived of the right to dispose of the collateral.³³ However, the debtor may still exercise the right to substitute or withdraw excess collateral.³⁴

Japan

64. Under Japanese law, there is no legal rule that provides for ‘singularity’ or ‘control’ in the context of EWRs or electronic bills of lading. ‘Singularity’ and ‘control’ are based on technological or contractual arrangements. However, ‘indirect possession of goods’ (that is the nature of a property right embodied in a warehouse receipt under the Japanese law) cannot be transferred by transfer of control; in other words, transfer of ‘control’ is not a complete equivalent of transfer of ‘physical possession’. A legal rule is required to achieve such property law effect. Lacking such legal rule, transfer of indirect possession requires ‘transfer of possession by instruction’, that is, the person who has indirect possession needs to instruct the person who has the direct possession to transfer the possession to a third party.

65. If it were adopted by Japanese legislation, the functional equivalence approach would substitute ‘physical possession’ with the notion of ‘control’³⁵ and require that a person must be in ‘control’ of an EWR in order to exercise the right represented in the EWR. In addition, transfer of ‘control’ must have the effect of transferring the right represented in the receipt, as well as the property law effect of transferring indirect possession of the stored goods associated with the receipt.

³² See Revised Article 7 of the UCC, Uniform Law Commission, available at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e82a58b8-014b-387a-a478-654cabb8e893f&forceDialog=0>.

³³ See *Private Equity Insurance Group SIA v Swedbank AS* [2016] EUECJ C-156/15 (10 November 2016).

³⁴ Article 2(2) of the Financial Collateral Directive provides further support of this conclusion when it specifies that any right of the debtor to substitute collateral or withdraw excess collateral shall not prevent the secured creditor from being in control of the assets.

³⁵ For example, the Explanatory Note to the UNCITRAL Model Law on Electronic Transferable Records, para. 84, explains that the “control” approach focuses on the use of a reliable method to identify the person in control of the electronic transferable record.” Id, para. 112 further states that “[a]lthough both the notion of “control” and the notion of “singularity” aim at preventing multiple requests for performance of the same obligation, the two notions operate independently and should be distinguished.”

66. Hence, a legal rule would be required to provide for an equivalent to 'physical possession' enabling 'control'. Although 'control' required to exercise the right may be technologically or contractually achieved, transfer of a proprietary interest in the goods covered by the receipt will have to rely on the traditional civil law notion of 'transfer of possession by instruction' (Art 184 of the Japanese Civil Code)³⁶ unless there is a special legal rule giving grounds to such transfer.³⁷ Thus, currently it is necessary that an instruction to the warehouse operator or carrier must be given by the transferor, for indirect possession to be transferred.

67. In Japan, legislation exists for electronically recorded monetary claims and paperless intermediated securities. Under this legislation, 'singularity' is achieved by adopting a registry model. The person who is recorded in the registry as the obligee, shareholder, latest transferee, or pledgee, as the case may be, has 'control'. The person in control may exercise the right, transfer the right, or pledge the right. Transfer or pledge takes effect when they are recorded in the registry. However, the question of transfer of indirect possession of the goods does not arise for electronic monetary claims, equity securities, or debt securities.

UNIDROIT Digital Assets Project

68. The following paragraphs provide a brief overview of the state of discussion concerning transfer and control of digital assets tied to real-world assets within the UNIDROIT Digital Assets and Private Law Project.

69. The UNIDROIT Digital Assets Project is tasked with "develop[ing] Principles relating to the legal nature, transfer and use of tokens."³⁸ A central facet of this project is the harmonisation of any new principles with existing law; therefore, any aspects of the MLWR that are relevant to the Digital Assets Project may be of interest to both projects.

70. Currently, the Digital Assets Project has tentatively proposed to define a digital asset as follows: "A digital asset is an electronic record which is capable of being subject to control." It is noted that this working definition may be subject to further refinement as the Project progresses. The Project members has also made several decisions with regard to the scope of the Project. They have agreed that: cryptography is not a delineating feature of what constitutes a digital asset; a digital asset need not fall under a specific regulatory classification (e.g. "security" or "financial instrument"); and that a digital asset is not simply a digital unit (i.e. a purely evidentiary function).

71. One core work-stream of the Digital Assets Project is the establishment of a taxonomy to define key terms.³⁹ It has proposed two categories of assets: an electronic record that gives a right or interest to an asset outside of that record, which includes movable tangibles, tokenised currencies, intangible financial assets, intangible non-financial assets; and an electronic record that gives a right or interest to an asset not outside of that record (i.e. Bitcoin). The most relevant category for the MLWR is that of movable tangibles.⁴⁰

72. The movable tangibles category under the Digital Assets Project encompasses tokens that represent a "real-world" or "off chain" asset. If EWRs were to be considered digital assets for the

³⁶ Civil Code Article 184 (Transfer of Possession by Instruction) provides as follows: "If a thing is possessed through an agent, the principal orders that agent to thenceforward possess that thing on behalf of a third party, and that third party consents thereto, the third party acquires the possessory rights."

³⁷ Kenjiro Egashira, '*Shotorihikini okeru sashizuni yoru sen-yu iten* [Transfer of possession by instruction in commercial transactions]' *Hogaku Kyokai Zasshi*, Vol 117, No 2 (2000), pp. 153-154.

³⁸ [UNIDROIT 2020 – C.D. \(99\) A.4](#), para. 23.

³⁹ [UNIDROIT 2019 – C.D. \(98\) 17](#), para. 267. It was noted that such a taxonomy could be based on mechanism and party-based analyses.

⁴⁰ Working Group Three meeting June 30, 2021, Sub-Group Four PowerPoint presentation.

purposes of the Project -which will depend on the definition of a digital asset yet to be agreed upon under the Digital Assets Project- they would be classified as movable tangibles as the electronic receipt represents a real-world asset, such as stored grain.⁴¹

73. Although the security rights of a tethered, real-world asset are likely to be the same as with a negotiable document (i.e. a warehouse receipt), priority rights may differ, depending upon the types of goods (e.g., inventory) covered by the particular negotiable document.⁴²

74. The Working Group on Digital Assets has highlighted the relevance of EWRs as an area of cross-cutting significance for both the MLWR and the Digital Assets Principles, particularly on the subject of transfer and control.⁴³

75. The question of transfer and control of digital assets has been a particularly challenging issue for the Project. As with the MLWR, the Digital Assets Project faces the challenge of harmonising disparate models of transfer and control. Some systems focus on evidencing factual control, while others consider legal control. In the Working Group's second session in March 2021 it was concluded that the Principles should adopt a factual definition of control, noting that the difference would have a significant impact on the duties of custodians. It was proposed to develop taxonomies of control to address subjects transfers, custody and the perfection of security rights.

76. Furthermore, the Digital Assets Project has laid out a number of overarching themes that should underlie the drafting of the Principles. Similar to the MLWR, the Principles should be technologically neutral and future proof.

77. Lastly, there are also aspects of divergence that create difficulties for potential harmonisation of concepts of transfer and control between the MLWR and the Digital Assets Project. As previously mentioned, under the Digital Assets Principles, transfer of control does not necessarily carry with it proprietary rights. Furthermore, the technical reality is such that exclusive control may not exist in practice under many circumstances.

Recommendation for the Working Group:

- The Working Group is invited to consider what provisions on control are needed in the MLWR for the specific context of warehouse receipts, and whether more concrete provisions needed than the MLETR standards on functional equivalence, non-discrimination and technology neutrality.

3. Information accessibility

78. The extent, and the conditions of accessibility of the information recorded or stored in a registry or a platform related to the issuance, the transfer or the encumbrance of EWRs should strike a balance between the below requirements.

79. First, they should be necessary and sufficient for the proper circulation of the EWRs. Therefore, the information that is fundamental for the EWR to perform its functions in the market

⁴¹ Many of the descriptors used by the Working Group are currently under discussion. Terms such as "real-world asset", "off-chain asset", or "represents" are working descriptors, and not finalised.

⁴² Digital Assets Sub-Group Group Three working paper ([UNIDROIT 2021 – Study LXXXII – W.G.3 – Doc. 2](#), para. 95) (Security rights and digital assets that embody real-world assets); Sub-Group Three had concerns that, for real-world assets, there were not comprehensive rules for legal issues like innocent acquisition and priority, and that having a comprehensive system for digital assets tethered to real world assets might create troubling legal conflicts. However, one expert posited that in the case of a tethered digital asset whose real-world counterpart is governed by an existing legal regime, the rules for the real-world asset would likely govern.

⁴³ [UNIDROIT 2021 – Study LXXXII – W.G.3 – Doc. 2](#), para. 32.

should be available to the relevant parties. The possession, the issuance (in paper) and the transfer of a paper-based warehouse receipt do also provide information to the relevant parties (who is in possession, information included in the receipt). A functional equivalent application to EWRs should determine which information is essential and who should be entitled to have access.

80. The description above of the operation of the South African EWRs model illustrates which information is available to whom depending of the account the user holds (operator, receiving party, operator). Each account enables the user to perform the actions pertinent to its own position and to access information relevant to each type of user. Then, technology controls the accessibility and the availability of relevant information to each type of user within the digital environment to guarantee the proper functioning of the system of EWRs.

81. Second, confidentiality considerations justify a limited (non-public) accessibility to information that is not relevant for the circulation of the EWRs and may compromise sensitive business data.

Question to the Working Group:

- What would be included in the black-letter rules of the MLWR with regard to the access to information in an EWR registry?

F. Rights and obligations of the warehouse operator

82. This section was already part of the Issues Paper presented to the Working Group at its first and second session. However, the Working Group did not have time to consider this section, and thus the following paragraphs are included here for consideration.

83. The core contractual obligations of the warehouse operator are to (i) take delivery of the depositor's goods, (ii) store them for safekeeping, and (iii) redeliver the deposited goods either to the depositor or another person entitled to delivery. Operators typically assume other obligations, the mechanics of which are prescribed in the warehouse receipts, such as the right of the depositor to access the warehouse.

Recommendation for the Working Group:

- *When reviewing the following sections, the Working Group is invited to preliminarily consider whether the Model Law should contain provisions on the warehouse contract or rather focus on the receipts. Notably, rather than in the Model Law text, the warehouse contract could be addressed in a guide to enactment which can describe the essential features and options for legislating on the warehousing contract.*
- *However, it is not recommended that the Group decides on this question before its work overall has reached a more advanced stage.*

1. Standard of care

84. Warehouses offer a custody service in return for a fee. A fundamental normative issue is whether or not they should be subject to a standard of care when performing their contractual obligations. Moreover, if a standard of care is adopted, it would then be necessary to determine its substantive content and whether it should be enshrined in either a default or mandatory rule.

85. Influenced by Roman law and the Napoleonic codifications, civil law jurisdictions have almost ubiquitously imposed a duty of care on persons performing service contracts, including non-gratuitous deposit contracts. Similarly, common law jurisdictions have long established that commercial operators offering services both to consumers and businesses should be subject to a

duty of care. Historically, both in civil and common law jurisdictions, the policy aim of these rules has been to curtail sharp contract practices and untoward behaviour that prevailed when service markets were solely governed by the caveat emptor standard.

86. The Model Law could adopt one of several alternative approaches. It could remain silent on this issue, deferring to general contract law principles governing bailments and service contracts in the relevant jurisdiction. Alternatively, the Model Law could establish a specific standard of care that would apply either as a default or mandatory rule to the performance of all or some of the obligations owed by the warehouse operator.

Comparative overview

87. In civil law jurisdictions, warehouse operators are typically required to perform their service obligations with the level of diligence expected of a professional operator in the relevant sector. The precise content of this standard is a matter for the courts on a case by case basis and can differ markedly across jurisdictions. Notably, in some systems this duty of care is mandatory while in others it can be altered by the parties.

88. In some common law systems such as the US UCC, a warehouse operator must perform its obligations with regard to the goods as “a reasonably careful person” would exercise under similar circumstances. US courts have held that this standard demands the level of care that an ordinarily prudent person engaged in that business is in the habit of exercising toward property entrusted for safekeeping, the degree of care that ordinarily prudent warehouses are accustomed to exercise with respect to similar goods under like circumstances, or the standard as a prudent person would exercise over that person's own property. Moreover, US courts have articulated this standard of care into specific obligations regarding incidental acts or omissions in connection with the storage, the quality and condition of the place where the goods are stored. This standard of care is mandatory, though parties are at liberty to agree a higher standard of care.⁴⁴

Questions for the Working Group:

- *Should there be a rule establishing a specific standard of care applicable to warehouse operators?*
- *If so, should this rule be default or mandatory?*

2. Storage of goods: separation, blending and commingling of stored goods

89. The obligation to store the goods delivered by the depositor is at the core of the warehousing contract. In principle, the warehouse is at liberty to store deposited goods as best suits its operation, albeit within the constraints of any applicable standard of care. Alternatively, the parties may contractually stipulate that the deposited goods need to be stored in a particular manner and possibly kept separate from all other deposited goods in storage.

90. The difficulty in leaving the issue under consideration exclusively to party autonomy is that the manner in which goods are stored can have ramifications that go beyond individual contractual agreements and personal claims, also giving rise to property law conundrums. Specifically, if deposited goods are blended, difficulties may arise in subsequently separating the goods. Even more problematically, if deposited goods are commingled into a mass, in such a way that they are no longer distinguishable, an even broader range of questions require consideration. Inter alia, it is necessary to establish the respective proprietary rights of each depositor into the commingled mass (e.g., ownership in common or other proprietary arrangement). Moreover, it is necessary to determine both the proprietary rights, contractual claims and possibly restitutionary claims of each

⁴⁴ Cf. UCC § 7-204.

depositor, if a commingled mass results in a shortfall of available goods either due to unforeseen loss or because of an over issuance of documents of title on the part of the warehouse.

91. The Model Law could adopt one of several alternative approaches. First, it could remain silent on this issue, leaving it to parties to address claims *in personam* in their agreement and tacitly deferring to personal property law for all claims in rem stemming from both lawful and wrongful commingling of goods. Alternatively, the Model Law could establish a regime that imposes either default or mandatory obligations on the warehouse operator regarding the manner in which goods must be stored – addressing both commingling and blending – coupled with special rules that address proprietary claims associated with commingled masses of goods.

92. For example, where a jurisdiction has decided to regulate the matter, warehouse receipts legislation may distinguish between fungible and non-fungible goods. For non-fungible goods, legislation may require warehouses to keep deposited goods separated to permit both identification and redelivery at all times. By contrast, for fungible goods, it may expressly allow warehouses to consolidate deposited goods into a commingled mass, unless otherwise agreed. It may also address explicitly some of the proprietary issues that arise when fungible goods are commingled, for example whether they are owned in common by the persons entitled thereto.

Questions for the Working Group:

- *Should there be rules that require the warehouse operator to keep deposited goods separated?*
 - If so: Should this rule be default or mandatory?
- *Should there be rules that address proprietary, contractual and restitutionary claims if goods are either blended or commingled into a mass?*

3. Obligation to redeliver

93. The obligation to redeliver the deposited goods is a cardinal element of warehousing contracts. Two sets of issues deserve special attention: a) the terms pursuant to which the redelivery obligation is performed; and b) whether there are defences that absolve the warehouse operator from performance of this obligation vis-à-vis a person who is entitled to take delivery of the goods under the warehousing contract or the associated warehouse receipt.

(a) Performance

94. A warehouse operator has a duty to redeliver the deposited goods. Performance of this obligation is governed by the applicable law and the terms of the warehouse receipt.

95. In both common law and civil law jurisdictions, rules are often found that address specific facets of the redelivery obligation. For example, a common default rule is that the warehouse operator must redeliver the identical property stored, yet for fungible goods it may redeliver substitute goods, as long as they are of the same kind and quantity as the goods originally stored. Similarly, default rules often tackle the modalities of redelivery, including the time and place of performance.

96. The Model Law could adopt one of several alternative approaches. It could remain silent on this issue leaving it entirely to party autonomy and defer to the courts regarding any gaps and omissions in the parties' contractual agreement. Alternatively, the Model Law could establish a kernel of default rules addressing some of the most common issues encountered in performance of redelivery.

Comparative overview

97. In most civil law jurisdictions, the redelivery obligation of warehouses is governed by detailed mandatory rules that are often buttressed by administrative sanctions.

98. UCC Art. 7 does not address the substance of the redelivery obligations. Nevertheless, certain states have developed a wealth of case law establishing default rules that supplement the parties' warehousing agreements.

Questions for the Working Group:

- *Should there be rules articulating the substance of the redelivery obligation of warehouse operators?*
- *If so, should they be default or mandatory?*

(b) Defences to redelivery

99. A warehouse operator is always justified in refusing to deliver deposited goods to a person that is not entitled to delivery. Conversely, a warehouse operator is liable if it fails to redeliver the deposited goods on demand to a person who is entitled to their possession under the warehousing contract or on presentation of a warehouse receipt.

100. A warehouse operator is also absolved for any such breach if it falls outside of the idiosyncratic liability regime for injury or loss of the deposited goods that applies to warehousing agreements (see H.6, below). However, in addition to these general exemptions, laws governing warehouse contracts often expressly articulate narrower exceptions that specifically address certain failures to perform the redelivery obligation.

101. The aforementioned exceptions can typically be divided into three categories. First, a warehouse operator's failure to redeliver the deposited goods is excused if it has already delivered the goods to a person whose receipt was rightful as against the claimant. Second, a warehouse is excused from its redelivery obligations if it disposed of the deposited goods in lawful enforcement of its lien or on the lawful termination of storage. Third, a warehouse is excused from redelivery if it refuses to perform because of a personal defence against the claimant. Notably, these exceptions all have their roots in general principles of property law, contract law and the law of restitution.

102. The Model Law could adopt one of several alternative approaches. It could remain silent on this issue and rely on the application to the relevant principles of property law, contract law and the law of restitution. Alternatively, it could explicitly establish specific exceptions to increase legal certainty and simplicity.

103. Laws typically establish a list of "excuses" that exempt a warehouse from liability for failure or delay in redelivery. Those clauses may be phrased as follows:

"A bailee shall deliver the goods to a person entitled under a warehouse receipt ... unless and to the extent that the bailee establishes any of the following:

- (1) delivery of the goods to a person whose entitlement to the goods was rightful as against the claimant;
- (2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
- (4) release, satisfaction, or any other personal defence against the claimant; or

(5) any other lawful excuse.”⁴⁵

Questions for the Working Group:

- *Should there be a rule establishing specific excuses to the warehouse operator’s redelivery obligation?*
- *If yes, should they be default or mandatory?*

4. Accessory obligations

104. The obligations of the warehouse operator to take delivery, store, allow inspection of and redeliver goods are cardinal. Nevertheless, alongside these obligations, it is possible to configure ulterior duties that may have a material impact on facilitating optimal performance of warehousing contracts and, in turn, the commercial use of warehouse receipts. For example, obligations requiring the warehouse to maintain its facilities in line with certain structural standards, implement security measures, employ personnel with certain qualifications or procure insurance cover for risks relevant to the storage of the goods in question.

105. These obligations are not necessarily closely related to a single warehousing contract, rather to the carrying out of the storage for hire activity of a warehouse in a holistic sense. Accordingly, it is a matter for consideration whether such obligations are most effectively implemented as contractual obligations, administrative law duties, or a combination of the two.

106. The Model Law could adopt one of several alternative approaches. First, it could remain silent on this issue, leaving it to market forces to determine whether warehouses commit to undertakings of this nature. Alternatively, the Model Law could nudge warehouses towards assuming these undertakings through default contractual obligations. Otherwise, the Model Law could suggest linking such obligations to the administrative law framework governing the warehousing activity. The remedial and enforcement pathways would, in particular, differ profoundly depending on whether these obligations were articulated as contractual or administrative.

Comparative overview

107. The French Commercial Code specifically articulates a set of warehouse obligations concerning the state of the storage facilities, staff qualifications, security measures and others. This Code, in particular, also requires warehouses to take out insurance against fire damage.

108. Under English law, courts have held that the bailee’s standard of care extends to the appointment, training and supervision of its staff, as well as monitoring the condition of stored goods, notifying the depositor of adverse events, and installing security measures. By contrast, English courts have held that warehouses are not required to insure the deposited goods, unless the parties agree otherwise, or such obligation arises due to trade customs or special circumstances.

109. UCC Art. 7 does not expressly impose obligations on the warehouse regarding its operational standards or insurance cover. Nevertheless, US state courts have articulated the standard of care imposed on bailees by the UCC into a multiplicity of specific obligations including duties regarding the condition of the warehouse, staff qualifications, preventative measures against fire, water damage, meteorological events and other hazards for staff. Notably, these same courts have held that warehouses are not required to insure deposited goods.

⁴⁵ Cf. UCC § 7-403.

Questions for the Working Group:

- *Should there be rules that expressly impose accessory obligations on warehouse operators?*
- *If so:*
 - Should these requirements be articulated as contractual obligations or administrative duties?
 - If articulated as contractual obligations, should they be default or mandatory?

5. Option to terminate storage

110. Storage of goods may be performed over an extended period of time. In principle, the duration of storage is either fixed (typically seasonal) or for an indefinite term; in practice, open-ended duration tends to be the norm in most trades.

111. For warehouse operators, it is generally unproblematic to organise their operation in such a way as to satisfy requests to redeliver deposited goods at short notice. In fact, it is extremely common to find warehousing contracts stipulating that depositors – or their order – can recover the goods on reasonable demand or subject to a 24 hours' notice period. By contrast, it is generally arduous to take redelivery of goods at short notice for depositors, as they tend not to have the necessary facilities and must rely instead on third parties. Thus, unexpected requests to take redelivery of deposited goods are likely to be extremely onerous for depositors, possibly resulting in distressed sales of the deposited goods at sub-market prices or even injury or loss to the goods.

112. This structural imbalance raises the issue whether the law should limit the extent to which warehouse operators can require depositors to take redelivery of deposited goods at short notice. The Model Law could remain silent on this issue, leaving this matter to party autonomy. Alternatively, the Model Law could set out default rules to establish a negotiating starting position, coupled with mandatory rules that address especially problematic scenarios.

113. Some laws address this issue in detail. As a general principle, these texts recognise that, in an open-ended agreement, warehouses can demand that the depositor – or their order – pay outstanding charges and recover deposited goods at any moment in time, subject to a certain notice period.

114. By way of exception, laws such as the UCC also provide that the notice period – which is 30 days according to the UCC – may be reasonably shortened if a warehouse believes in good faith that deposited goods are about to deteriorate or decline in value below the amount of outstanding charges subject to a lien held by the warehouse in the deposited goods. The 30 days' notice can also be shortened or entirely disregarded if, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods.⁴⁶

Questions for the Working Group:

- *Should there be a rule limiting the right of a warehouse to terminate storage?*
- *If so, should this rule be mandatory or default?*

⁴⁶ Cf. UCC § 7-206.

6. Warehouse liability

115. The liability regime for warehouses can be broken down into three key elements: (i) basis of liability, (ii) burden of proof, and (iii) limitation and exclusions.

(a) Basis of liability

116. Since classical Roman Law, special liability regimes have been established for arrangements whereby one person is voluntarily in possession of goods which belong to another and is subject to an obligation to return them in due course. Moreover, liability regimes have, over the course of centuries, been differentiated according to whether such arrangements were gratuitous or for reward, with further distinctions having been drawn based on the activities carried out by the person in custody of the goods – naval carrier, innkeeper, restaurant, grain elevator, deposit vault.

117. The Model Law could adopt one of several alternative approaches. It could remain silent on this topic, deferring to the basis of liability generally adopted by the relevant jurisdiction for these kinds of transactions. However, it should be noted that the basis of liability for warehouse operators is one of the key aspects of the body of rules governing warehousing contracts, and has far-reaching implications on the commercial use of warehouse receipts as documents of title. Alternatively, the Model Law could either establish a regime of strict liability for warehouses or one that only holds them accountable when they fail to comply with the standard of care demanded of them in performing their obligations. In principle, both of these bases of liability are viable, yet they substantively alter the risk profiles assumed by warehouse operators and depositors respectively.

Comparative overview

118. Both under English law and the UCC, it has long been held that warehouse operators are not liable for losses or injury to deposited goods if they occurred without negligence. Accordingly, warehouse operators are not subject to a strict liability regime, rather one that is based on fault and anchored to the applicable standard of care. Notably, parties may agree upon a stricter liability regime for warehouse operators.⁴⁷

119. By contrast in most civil law jurisdictions – such as France, Italy and Germany – warehouse operators are subject to a strict liability regime for loss or damage to goods, which is mandatory and is expressly crafted as stricter than what is generally applicable for breach of contract. Typically, the only admissible exceptions to such liability are when the deposited goods were damaged or perished due to an action or omission of the depositor, or unmitigable intrinsic flaws, or as a consequence of a fortuitous and unforeseen event.

Questions for the Working Group:

- *Should there be a rule establishing a special basis of liability for warehouse operators?*
- *If so:*
 - Should this special basis of liability cover all the obligations of a warehouse operator or only loss and damage to the goods? What about delay?
 - Should this basis of liability be mandatory or default?

⁴⁷ Cf. UCC § 7-204.

(b) Burden of proof

120. Warehouse liability for breach of its obligations presents burden of proof issues at two interconnected levels. First, burden of proof needs to be allocated regarding which party must evidence the substance of the obligations owed by the warehouse operator. Second, burden of proof needs to be allocated regarding which party must adduce evidence that such obligations have been breached.

121. The Model Law could adopt one of several alternative approaches. It could remain silent on this topic, deferring to the private law and procedural law regimes of the jurisdiction in question. Alternatively, it could establish special burden of proof rules. Regarding the first level, it is almost inevitable that burden of proof should be on the depositor who alleges a breach of contract. For the second level, however, the Model Law may consider switching the burden of proof wholly or partly from the depositor to the warehouse operator, depending on the normative objectives pursued.

Comparative overview

122. In most civil law jurisdictions, the burden of proof is almost entirely placed on warehouse operators, as soon as depositors have shown that the loss or damage to the deposited goods occurred while they were in storage. Because these legal systems generally subject warehouse operators to strict liability, this burden of proof regime compounds their position as *de facto* insurers of the deposited goods. This burden of proof regime is mandatory.

123. English law has long established a special burden of proof regime for warehousing agreements. In the first place, burden of proof lies with the depositor to show that the warehouse operator was voluntarily in possession of the deposited goods and that during this time they were either damaged or destroyed. Typically, depositors discharge this burden of proof by adducing evidence documenting that the goods were either not redelivered at all or that they were redelivered in worse condition than that they were in at the time of deposit. If such matters are proven, the burden of proof shifts to the warehouse operator. It is for the warehouse to show that it took care of the deposited goods in line with the required standard of care or that any failure to exercise such care did not cause or contribute to the loss or damage in dispute. This burden of proof regime is mandatory.

124. The UCC does not establish a uniform rule regarding the burden of proof regime for warehouse liability. The commentary to § 7-403(1)(b) expressly states that the allocation of the burden of proof is governed by the procedural law of the various states. This legislative stance has resulted in a fragmented legal framework. A narrow majority of states have adopted a burden of proof regime substantively analogous to that established by English law. However, a sizeable minority of states places the burden of proof almost entirely on depositors. They are required to adduce evidence proving the existence of the breached obligation, the loss or damage to the goods, and also that the warehouse was negligent in its operations. This fragmented burden of proof regime has attracted sharp criticism from both courts and commentators.

Questions for the Working Group:

- *Should there be a rule establishing a special burden of proof regime for the liability of warehouse operators?*
- *If so:*
 - Should the warehouse operator be subject to a greater burden of proof than that typically placed on defendants in a breach of contract claim?
 - Should this rule be mandatory or default?

(c) Limitations and exclusions

125. Stipulations that exclude and limit liability for breach of contract are generally permitted by contract law, both in civil and common law jurisdictions. This is a corollary of the underlying freedom of contract principle. Nevertheless, limitation and exclusion terms are typically subject to close judicial scrutiny (e.g., narrow construction, *contra proferentem* interpretation) and are often regulated by statutes that aim to prevent certain market participants from exploiting their bargaining power, especially vis-à-vis consumers.

126. The limitation and exclusion of warehouse liability is a complex topic that requires careful consideration of multifarious factors. From a perspective de *iure condendo*, the challenge is to develop a limitation and exclusions regime that strikes the balance between the competing interests at play. At one end of the spectrum, if warehouse operators are allowed to completely exclude their liability, there is a risk that prospective depositors will shy away from using storage services; moreover, warehouse receipts will become unpalatable to market participants due to the absence of recourse against warehouse operators. At the other end of the spectrum, if warehouse operators are entirely prevented from limiting their liability for damage or loss, they might be unable to manage their risk *ex ante* and thus either not accept deposits or make the cost of storage extremely expensive.

127. The Model Law could remain silent on this topic, deferring to the private law of the jurisdiction in question and its general regimes on limitation and exclusion of liability. However, it should be noted that whether and the extent to which a warehouse operator may limit its liability for loss or damage to the goods are an essential element of the legal framework governing warehousing contracts. Alternatively, the Model Law could seek to develop a mandatory regime that strikes a balance between the need of warehouse operators to keep their maximum liability under control and the need of depositors and warehouse receipt holders to have recourse against warehouses if the deposited goods are lost or damaged.

Comparative overview

128. In France and other jurisdictions that have been influenced by the Napoleonic codifications, liability of warehouse operators is often limited by law. Administrative authorities establish ad hoc computational rules on the basis of which the maximum liability of warehouse operators is established, depending on the nature and value of the stored goods. It should be borne in mind that these rules exist in legal frameworks in which warehouse operators are subject to strict liability.

129. English Law has historically favoured the practice of limiting or exempting bailees, including warehouse operators, as regards their liability for loss or damages of the stored goods. Nevertheless, courts have expressly voided attempts to exempt liability for fraud as well as conversion for own benefit. Moreover, it should be noted that limitation and exclusion terms are generally subject to a substantive test of “reasonableness” pursuant to the Unfair Contract Terms Act 1977.

130. The UCC provides that warehouses may contractually exclude or limit their liability – both directly and indirectly – for loss or damage to the goods. The only mandatory bar concerns attempt to limit liability for conversion:

“(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use”

“(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.”

131. Notably, the UCC acknowledges that other laws might void any contract term limiting or excluding warehouse liability.⁴⁸

⁴⁸ Cf. UCC § 7-204.

ANNEXE I**MODEL LAW ON WAREHOUSE RECEIPTS****Preliminary draft structure**

1. The suggested draft structure for the Model Law takes into account the aspects to be covered by the MLWR's scope proposed in Section II of this document above. The text included under the Chapter titles in form of bullet points is not being proposed as the headings of provisions, but merely as a prompt for the contents.

Heading	Contents
Chapter I. Scope of application and general provisions	<ul style="list-style-type: none"> • Scope of application • Definitions and rules of interpretation • Party autonomy • General standards of conduct • International origin and general principles
Chapter II. Issue of a warehouse receipt	<ul style="list-style-type: none"> • Persons who may issue a warehouse receipt • Form and content of a warehouse receipt • Loss of a warehouse receipt • Duplicate warehouse receipts • Issuance or re-issuance in electronic form <p>This chapter would include the registration of warehouse receipts as far as a warehouse receipt need to be entered in the register in order to be considered issued (see also comment on Chapter III, below).</p>
Chapter III. The warehouse receipts registry system	<ul style="list-style-type: none"> • Establishment of the registry system <p>While registration of warehouse receipts is dealt with in Chapter II to the extent necessary for the warehouse receipt to be validly issued, Chapter III contains the provisions that set up the registry system, and explain how it works. This division of the material would not be dissimilar to the way in which registration is dealt with in the MLST (Chapter III, Art. 18, vs Chapter IV).</p>
Chapter IV. Transfer of a warehouse receipt; Protected holder and other transferees; Warranties; Miscellaneous provisions regarding transfers	<ul style="list-style-type: none"> • Transfer of a negotiable warehouse receipt • Transfer of a negotiable warehouse receipt to a [protected holder] [other type of holder to be specified by the enacting State] • Rights of a [protected holder] [other type of holder to be specified by the enacting State] • Rights of a holder defeated in certain cases • Transfer of a warehouse receipt by assignment • Rights of a transferee who is not a [protected holder] [other type of holder to be specified]

Heading	Contents
	<p>by the enacting State]</p> <ul style="list-style-type: none"> • Warranties on transfer of a warehouse receipt • Endorser not a guarantor • Subsequent sale of a warehouse receipt in possession of the seller
<p>Chapter V. Dealings with warehouse receipts by way of security</p>	<ul style="list-style-type: none"> • Apart from including secured creditors as “purchasers” in the definition section, this subject should be dealt with by the secured transactions law of the enacting State. Section IV, bullet points 3 and 4, gives priority to protected holders against existing “non-possessory security rights”, however this need not be recognised by the secured transactions law of the enacting State. If there is a conflict it should be addressed in the Model Law, however this may not require a separate chapter.
<p>Chapter V. Rights and obligations of warehouse operators</p>	<p>TBD</p>
<p>Chapter VI. Conflict of laws</p>	<ul style="list-style-type: none"> • These provisions may not be needed, and instead some guidance provided on the implementation of the MLST that covers these issues comprehensively. A guide may identify some connecting factors for the priority conflicts arising in connection with security rights in EWRs.
<p>Chapter VII. Implementation of the law</p>	<ul style="list-style-type: none"> • Amendment and repeal of other laws • Transitional rules • Act does not apply to existing warehouse receipts • Entry into force of this Law

ANNEXE II

NATIONAL LAWS ON SINGLE AND DUAL WAREHOUSE RECEIPTS SUMMARY REPORT

A. General observations

1. This research reviews the law and practice in 40 countries concerning single and dual warehouse receipts. These countries can be divided into four groups:
 - i. Countries that have adopted single warehouse receipts, including common law jurisdictions and some civil law jurisdictions, such as China⁴⁹, Germany⁵⁰, and Japan.⁵¹
 - ii. Countries that have adopted dual warehouse receipts, mostly in Latin America. The two instruments are generally referred to as the certificate of deposit (“certificado de depósito”), and pledge bond (“bono de prenda”) or warrant (“warrant”).⁵²
 - iii. Countries that allow for both single and dual warehouse receipts, such as Kazakhstan⁵³, Kyrgyzstan⁵⁴, Russia⁵⁵, and Ukraine.⁵⁶
 - iv. Countries that have adopted dual warehouse receipts as the general rule, but single warehouse receipts for certain commodities and/or exchange markets. This has been adopted by legislation or in practice in countries such as France⁵⁷ and the United Arab Emirates.⁵⁸

2. In detail, the formats of warehouse receipts adopted by these countries are as follows:

⁴⁹ Civil Code [China], Articles 908, 909, available in Chinese at <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>; in English at http://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html.

⁵⁰ Commercial Code (Handelsgesetzbuch) [Germany], Section 475c(1), original in German at <https://www.gesetze-im-internet.de/hgb/>.

⁵¹ See below B.1.(3).

⁵² See, for example, Law 9643 [Argentina], Article 6, available in Spanish at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/37048/texact.htm>; Law 18690 [Chile], Articles 4 and 5, available in Spanish at <https://www.bcn.cl/leychile/navegar?idNorma=30072>; General Deposit Warehouses Law (Ley de Almacenes Generales de Depósito) [Costa Rica], Article 15, available in Spanish at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=8185&nValor3=86568&strTipM=TC.

⁵³ Civil Code [Kazakhstan], Article 797, available in three languages at <https://adilet.zan.kz/eng/docs/K940001000>.

⁵⁴ Civil Code [Kyrgyzstan], Article 906, available in Russian at <http://cbd.minjust.gov.kg/act/view/ru-ru/5>.

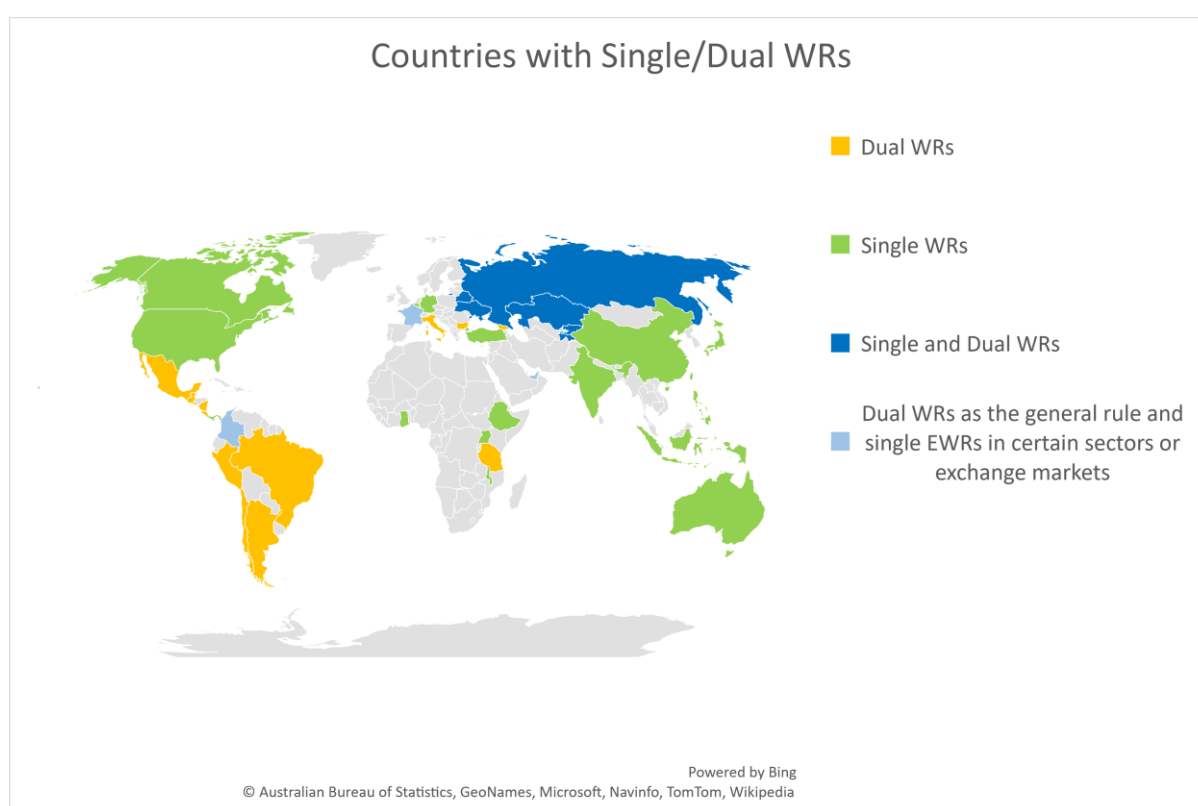
⁵⁵ Civil Code [Russia], Articles 912-914, available in Russian at <https://legalacts.ru/kodeks/GK-RF-chast-2/>.

⁵⁶ Civil Code [Ukraine], Articles 961-965, available in Ukraine at <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁵⁷ See below B.1.(1).

⁵⁸ See below B.2.

Formats of WRs	Countries
Single WRs	Australia, Belgium, Canada ⁵⁹ , China ⁶⁰ , Ethiopia, Germany, Ghana, India, Indonesia, Japan, Malawi, Panama, Philippines, Singapore, Turkey, Uganda, US
Dual WRs	Argentina, Brazil, Bulgaria, Chile, Costa Rica, El Salvador, Georgia, Guatemala, Italy, Mexico, Nicaragua, Peru, Tanzania
Single and Dual WRs	Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine
Dual WRs as the general rule and single EWRs in certain sectors or exchange markets	Columbia (No separate circulation of pledge bonds in “Bolsa Mercantil de Colombia”) ⁶¹ , France (“Reçu d'entreposage” for certain raw materials which may be subject to a contract negotiated on a financial instruments trading platform) ⁶² , United Arab Emirates (Dubai Multi Commodities Centre) ⁶³



B. Recent Developments

3. Neither dual nor single warehouse receipts may be considered the predominant model, but there is a subtle trend of increasing acceptance of single warehouse receipts on the legislative level. First, some countries have adopted single warehouse receipts in addition to, or as

⁵⁹ Quebec has no statutory regime for warehouse receipts. Rather, general contract law applies. The contract of deposit (“contrat de dépôt”) is set out in the Civil Code. See Civil Code of Québec [Canada], Article 2280, available in English at <http://legisquebec.gouv.qc.ca/en/ShowTdm/cs/CCQ-1991?langcont=en>.

⁶⁰ Unless otherwise provided, China in this report only refers to the Mainland, as the Civil Code only applies to this territorial scope. It is noted that the Taiwan Region likewise provides for single warehouse receipts.

⁶¹ See below B.2.

⁶² See below B.1.(1).

⁶³ See below B.2.

the replacement of, dual warehouse receipts. Secondly, the exchange markets in some dual format countries have implemented single warehouse receipts on electronic trading platforms.

1. Adoption of single warehouse receipts in legislation

(1) France: introduction of “reçu d'entreposage”

4. As a general rule, the Commercial Code has adopted the dual warehouse receipt, namely the receipt (“le récépissé”) and the warrant (“le warrant”).⁶⁴ Law No. 2019-486 of 22 May, 2019, has introduced a new instrument, “reçu d'entreposage”, into the French Commercial Code. Its use is limited to certain raw materials which may be the subject of a contract negotiated on a financial instruments trading platform.⁶⁵ A “reçu d'entreposage” certifies the ownership of the goods deposited at the general warehouse.⁶⁶ Its issuance and transfer are recorded in a registry system managed by the above platform.⁶⁷ Since the “reçu” was designed to facilitate the exchange of agricultural raw material, the transfer of ownership of the goods represented by the “reçu” results from the registration of the purchaser as the holder of the “reçu”. Notably, the pledge of the goods covered by a “reçu d'entreposage” becomes effective vis-à-vis third parties by its inscription in the registry system.⁶⁸ It has been noted that the “reçu d'entreposage” constitutes a security instrument—rather than a financial instrument (“instrument financier”) that can be traded on a stock market—and is functionally equivalent to a “récépissé-warrant”.⁶⁹

5. This change may be partly attributed to the employment of the electronic registration system. It has been argued that the dual warehouse receipt allows the owner of the goods to evidence its ownership in selling the goods after a pledge has been established.⁷⁰ An electronic warehouse receipt (“EWR”) system can fulfil the same function without the separation of the documents certifying ownership and pledge. Therefore, with respect to EWRs, the information included therein may be more important than the format.

(2) Japan: from the juxtaposition of the single and dual formats to the single format

6. Another example of recent reform is Japan. The Japanese Commercial Code No. 48 of 9 March, 1902, only provided for dual warehouse receipts.⁷¹ The amendment to the Japanese Commercial Code, Law No. 73 of 3 May, 1911, introduced single warehouse receipts, and therefore, provided for both single and dual formats.⁷² The Japanese Commercial Code, by its latest amendment, Law No. 29 of 25 May, 2018, has abandoned the dual format and simply

⁶⁴ Code de Commerce, version en vigueur au 5 mai 2021 (C.com.) [France], Article L522-24, available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/2021-05-27.

⁶⁵ Ibid, Article L522-37-1.

⁶⁶ Ibid.

⁶⁷ Ibid, Articles L522-37-1 and L522-37-2.

⁶⁸ Ibid, Article L522-37-4, R522-24-3 and R522-24-4.

⁶⁹ Voir Reçu d'entreposage - Septembre 2020, Fiches d'orientation, Dalloz.fr, available at <https://www.dalloz.fr/documentation/Document?id=DZ%2FOASIS%2F001772>; Patrick Barban, Loi PACTE: création d'un instrument de crédit sur matières premières sous-jacentes de contrats financiers, *Banque & Droit*, N° 185, Mai-Juin 2019, p 31.

⁷⁰ Adalberto Elias, *The warehouse receipt: A comparison between the United States and Mexico*, Kozolchyk National Law Center (NatLaw), available at <http://natlaw.com/pacific-rim-electronic-warehouse-receipts/>.

⁷¹ Commercial Code No. 48 of 9 February 1899 [Japan], the version before the first amendment by Law No. 73 of 3 May 1911, Article 358, available in Japanese at <https://dl.ndl.go.jp/info:ndljp/pid/788011/83>.

⁷² Law No. 73 of 3 May 1911 [Japan], Article 383, available in Japanese at <https://dl.ndl.go.jp/info:ndljp/pid/2951713/1>.

provides for single warehouse receipts.⁷³ It has been noted that the reason underlying this change is the rare employment of dual warehouse receipts in practice.⁷⁴

(3) Belgium: adoption of the single receipt format by the reform on movable securities

7. Belgium adopted the dual warehouse receipt, composed of “ceel” and “warrant”, as early as 1862.⁷⁵ This regime has been repealed by the Act of 11 July, 2013, which entered into force on 1 January, 2018.⁷⁶ This act fundamentally reformed the legal regime for a pledge on movables in Belgium by discarding the requirement for the dispossession of the pledgee. Instead, the pledge shall be registered in an electronic national pledge register set up by the Ministry of Finance.⁷⁷ Accordingly, the pledge on warehouse receipts will also be perfected in this pledge register.

2. Implementation of single warehouse receipts in exchange markets: examples of the UAE and Colombia

8. In some countries that have adopted the dual format in legislation, exchange markets have implemented single warehouse receipts based on electronic trading platforms. For example, while the Federal Law No. 18 of the United Arab Emirates provides for dual warehouse receipts,⁷⁸ the Dubai Multi Commodities Centre (“DMCC”) established a single warehouse receipt system in its electronic trading system, “DMCC Tradeflow”.⁷⁹

9. The Colombian Mercantile Exchange has taken a nuanced approach. Rather than establishing its own single warehouse receipt system, it simply prohibits the circulation of pledge bonds separately from the certificates of deposit.⁸⁰ The dual warehouse receipts, albeit provided for in national legislation,⁸¹ are traded in a single format in the Colombian Mercantile Exchange.

⁷³ This amendment was introduced by Law No. 29 of 25 May 2018 [Japan], Article 600, available in Japanese at https://www.shugiin.go.jp/internet/itdb_housei.nsf/html/housei/19620180525029.htm. The currently effective Japanese Commercial Code is available in Japanese at <https://elaws.e-gov.go.jp/document?lawid=132AC0000000048>.

⁷⁴ See UNIDROIT Working Group on a Model Law on Warehouse Receipts, Summary Report of the First Session (Videoconference, 2-4 December 2020), UNIDROIT 2021, Study LXXXIII - W.G.1 – Doc. 5, February 2021, para 50, available at <https://www.unidroit.org/english/documents/2021/study83/wg01/s-83-wg01-05-e.pdf>.

⁷⁵ Act on the introduction of the warrant system [Belgium], Article 1, available in Dutch at [http://www.ejustice.just.fgov.be/cgi_loi/arch_a1.pl?N=&sql=\(text+contains+\(%27%27\)\)&rech=1&language=nl&tri=dd+AS+RANK&value=&table_name=wet&cn=1862111830&caller=archive&fromtab=wet&la=N&ver_arch=003](http://www.ejustice.just.fgov.be/cgi_loi/arch_a1.pl?N=&sql=(text+contains+(%27%27))&rech=1&language=nl&tri=dd+AS+RANK&value=&table_name=wet&cn=1862111830&caller=archive&fromtab=wet&la=N&ver_arch=003).

⁷⁶ Loi modifiant le Code Civil en ce qui concerne les sûretés réelles mobilières et abrogeant diverses dispositions en cette matière [Belgium], Article 103, available in French at https://www.ejustice.just.fgov.be/cgi_loi/change_lq_2.pl?language=fr&nm=2013009377&la=F.

⁷⁷ Ibid, Article 32.

⁷⁸ Art Law Federal No. 18 [UAE], Article 183, available at <https://elaws.moj.gov.ae/mojANGULAR/index.aspx>.

⁷⁹ DMCC TradeFlow Corporate Access Agreement, 11 Feb 2013, p. 5; Appendix 2, Rules for Taking Security Over DMCC TradeFlow Warrants, 4.2(a) (p. 77), available at <https://www.dmcc.ae/application/files/1314/8061/2881/DMCCTradeflow-CorporateAccessAgreement-NewLogo.pdf>.

⁸⁰ Reglamento de Funcionamiento y Operación de la Bolsa (as of 15 April 2021), Article 3.8.2.1.2(6), available at <https://www.bolsamercantil.com.co/Portals/0/2021/04/16/Reglamento%20BMC%20-%20v20210415.pdf>.

⁸¹ Decreto 410 de 1971 [Columbia], Article 757, available in Spanish at <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=41102>.

ANNEXE III**ADDITIONAL RESOURCES**UNCITRAL Instruments

UNCITRAL, UNCITRAL Legislative Guide on Secured Transactions (2007)
https://www.uncitral.org/pdf/english/texts/security-lg/e/09-82670_Ebook-Guide_09-04-10English.pdf

UNCITRAL, UNCITRAL Guide on the Implementation of a Security Rights Registry (2013)
<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/security-rights-registry-guide-e.pdf>

UNCITRAL, UNCITRAL Model Law on Secured Transactions (2016)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf

UNCITRAL, UNCITRAL Model Law on Secured Transactions: Guide to Enactment (2017)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlst_guide_to_enactment_e.pdf

UNCITRAL, UNCITRAL Practice Guide to the Model Law on Secured Transactions (2019)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-10910_e.pdf

Other Instruments

OAS, Principles for Electronic Warehouse Receipts for Agricultural Products (2016)
http://www.oas.org/en/sla/iajc/docs/CJI-doc_505-16_rev2.pdf

OAS, Model Inter-American Law on Secured Transactions (2002)
https://www.oas.org/dil/Model_Law_on_Secured_Transactions.pdf

Global SCF Forum, Standard Definitions for Techniques of Supply Chain Finance (2016)
<https://iccwbo.org/content/uploads/sites/3/2017/01/ICC-Standard-Definitions-for-Techniques-of-Supply-Chain-Finance-Global-SCF-Forum-2016.pdf>

Guides and Publications

FAO, The Use of Warehouse Receipt Finance in Agriculture in Transition Countries (2013)
<http://www.fao.org/3/a-i3339e.pdf>

FAO/EBRD, Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends (2015)
<http://www.fao.org/3/a-i4318e.pdf>

IFC, Warehouse Finance and Warehouse Receipt Systems - A Guide for Financial Institutions in Emerging Economies (2013)
https://collaboration.worldbank.org/content/usergenerated/asi/cloud/attachments/sites/collaboration-for-development/en/groups/agrifin/products/jcr:content/content/primary/blog/warehouse_financean-TQr3/Warehouse%20Finance%20and%20Warehouse%20Receipt%20Systems.pdf

IOSCO, Commodity Storage and Delivery Infrastructures: Good or Sound Practices, Consultation Report (2018)

<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD604.pdf>

IOSCO, Principles for the Regulation and Supervision of Commodity Derivatives Markets (2011)

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf>

IOSCO, The Impact of Storage and Delivery Infrastructure on Commodity Derivatives Market Pricing (2016)

<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD530.pdf>

WBG, A Guide to Warehouse Receipt Financing Reform: Legislative Reform (2016)

<http://documents1.worldbank.org/curated/en/885791474533448759/pdf/108450-WP-PUBLIC.pdf>