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

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**PRELIMINARY DRAFTING SUGGESTIONS FOR THE
MODEL LAW ON WAREHOUSE RECEIPTS**

1. This document provides preliminary drafting suggestions for the future Model Law on Warehouse Receipts. At this stage, this document contains preliminary proposals for three possible chapters:

- i. Chapter I – Scope and general provisions (Page 2) (this Chapter needs to be expanded as additional Chapters are prepared)
- ii. Chapter II – Issuance of a warehouse receipt (Page 7)
- iii. Chapter IV – Transfer of warehouse receipts. Protected holders and other transferees. Warranties. Miscellaneous provisions regarding transfer (Page 19)

2. The drafting aims to ensure consistency with existing UNCITRAL Model Laws, in particular the UNCITRAL Model Law on Secured Transactions (MLST), as well as other relevant international instruments.

3. The tables on the following pages for each of the chapters include proposed text for articles to be included in the future Model Law, corresponding articles in national warehouse receipt laws (WRLs) and international instruments, as well as items for discussion. The Working Group is invited to consider issues of substance as well as such of structure and form, as the present draft is of a preliminary nature. Some drafting suggestions are merely indicative to facilitate the Working Group's discussions. Many other articles prepared are based on consensus or discussion which took place during the first and second sessions of the Working Group. Where appropriate, the relevant sections of the Summary Report of the First Session ([Study LXXXIII – W.G.1 – Doc. 5](#)) and of the Second Session ([Study XXXIII – W.G.2 – Doc. 4](#)) have been referenced accordingly.

4. The Secretariat is particularly grateful to Mr Marek Dubovec (Kozolchyk National Law Center (NatLaw)), Mr Bruce Whittaker (University of Melbourne), as well as Working Group members Mr Nicholas Budd and Mr Jean-François Riffard for their contributions to this document.

MODEL LAW ON WAREHOUSE RECEIPTS

DRAFTING SUGGESTIONS

Chapter I. Scope and general provisions

Suggested text	Discussion	Corresponding provisions in national WRLs ¹	Relevant provisions in international instruments ²
Article 1. Scope of application			
This Law applies to warehouse receipts.	This provision is somewhat self-serving (or obvious, or both), but it seems to be usual practice to include a provision along these lines.		MLST , Art. 1(1); MLETR , Art. 1(1); MLL, Art. 1
[Despite paragraph 1, this Law does not apply to:]	<p><i>Question to the Working Group:</i></p> <ul style="list-style-type: none"> • <i>Should the MLWR set out any exclusions from the scope of application? If so, what exclusions are needed? (This will depend, of course, on how the MLWR will define "warehouse receipt".)</i> <p>One option might be to include the provision as a placeholder, and leave it to each adopting jurisdiction to decide what (if anything) to put in the list.</p>		MLST , Art. 1(3); MLETR , Art. 1(2) and (3); MLL, Art. 3
Article 2. Definitions	Further definitions will need to be added to this article as the other provisions of the Law are drafted.	WRLP, Art. 3; WRAT, Art. 3	
For the purposes of this Law:			
["Depositor" means a person who deposits goods for storage with a warehouse operator.]	It may be appropriate to include a definition of this term if (for example) the name or other identifying	WRLP, Art. 3; WRAT, Art. 3	

¹ WRLP = Warehouse Receipts Law 2018 (Philippines). WRAT = Warehouse Receipts Act 2005 (Tanzania). WRABC = Warehouse Receipt Act 1996 (British Columbia).

² MLST = Model Law on Secured Transactions (UNCITRAL). MLETR = Model Law on Electronic Transferable Records (UNCITRAL). MLL = Model Leasing Law (UNIDROIT).

Suggested text	Discussion	Corresponding provisions in national WRLs ¹	Relevant provisions in international instruments ²
	<p>details of the depositor need to be included in a warehouse receipt.</p> <p>If the definition is retained, the Working Group may wish to consider whether it is desirable to use the word “deposit” in the definition, or whether that is too circular. (Note that the word “deposit” is also used in the draft definition of “storage agreement” below. If it is changed here, it should be changed there as well.)</p>		
<p>“Holder” of a warehouse receipt means the person who is in possession of the warehouse receipt.</p>	<p>Note: The 2018 Warehouse Receipts Law of the Philippines (WRLP) and the 2005 Warehouse Receipts Act of Tanzania (WRAT) also require that the person have a property right in the receipt. Whether this is appropriate will depend on the ways in which the term “holder” is used elsewhere in the Law.</p> <p>Consideration will also need to be given to whether the definition is appropriate for receipts that are issued to order (rather than bearer).</p>	<p>WRLP, Art. 3; WRAT, Art. 3</p>	
<p>“Storage agreement” means an agreement between a warehouse operator and a depositor [in which the warehouse operator agrees to store goods deposited with it by the depositor for a fee/that sets out the terms on which the warehouse operator agrees to store goods deposited with it by the depositor].</p>	<p>This drafting contains two potential approaches for the Working Group to consider. The first is a more traditional approach to describing an agreement. The second, in contrast, focusses on the fact that the storage agreement sets out the terms on which the goods are held, which is the aspect of the storage agreement that will be of primary interest to the holder of a warehouse receipt.</p>		
<p>“Warehouse operator” means a person who is in the business of storing goods for other persons for reward.</p>	<p>The Working Group agreed with the elements included in this definition (Report of second session, para. 18).</p>	<p>WRLP, Art. 3; WRAT, Art. 3</p>	

Suggested text	Discussion	Corresponding provisions in national WRLs ¹	Relevant provisions in international instruments ²
<p><i>Option 1:</i> “Warehouse receipt” means an acknowledgment in writing by a warehouse operator of the receipt for storage of goods not owned by the warehouse operator.</p> <p><i>Option 2:</i> “Warehouse receipt” means a receipt issued by a warehouse operator in respect of storage[, handling or shipment] of goods.</p> <p><i>Option 3:</i> “Warehouse receipt” means a receipt issued by a warehouse operator that evidences title to goods stored at a warehouse.</p> <p><i>Option 4:</i> “Warehouse receipt” means a document issued by a warehouse operator that:</p> <ul style="list-style-type: none"> (a) describes itself as a warehouse receipt; (b) contains an acknowledgement that the warehouse operator holds the goods described in the document on behalf of the holder of the document, and a promise to deliver the goods to the holder [on the date and in the manner] described in the document; and (c) complies with the requirements set out in article 8, paragraph 1 of this Law. 	<p>A number of options are proposed for consideration by the Working Group.</p> <p>The <i>first two options</i> (based on the WRA in British Columbia and the WRLP in the Philippines, respectively) are very broad, and focus on the initial receipt of the goods by the warehouse operator from the depositor. It should be queried whether they might cause the MLWR to apply more broadly than intended (for example, the reference to “shipment” might blur the line between warehouse receipts and bills of lading).</p> <p>The <i>third option</i> (based on the WRA in Tanzania) is more focussed, and clearly states that a warehouse receipt carries some property rights (unlike the first two options). However, it does raise other questions (What is required for the document to “evidence title”? Does the document cease to be a warehouse receipt if something happens to the goods?).</p> <p>The <i>fourth option</i> is based on the definition of “bill of exchange” in article 1 of the 1930 Convention. Paragraph (a) of the definition follows the approach taken in the definition of “bill of exchange” in the 1930 Convention. However, query whether it is needed. The substantive part of the definition is in paragraph (b). Unlike the first three options, this text focusses not on the initial deposit of the goods by the depositor, but rather on the substantive obligations of the warehouse operator under the warehouse receipt (ie it focusses on</p>	<p>WRABC, Art. 1; WRLP, Art. 3; WRAT, Art. 3</p>	

Suggested text	Discussion	Corresponding provisions in national WRLs¹	Relevant provisions in international instruments²
	what it is that the warehouse receipt is intended to do, rather than where it came from). Paragraph (c) limits the definition to documents that contain the “essential terms” that the Working Group has been discussing in the context of Chapter II (if the Working Group decides that a document cannot be a warehouse receipt unless it contains those essential terms, then it would be appropriate to include this in the definition itself.)		
Article 3. Party autonomy	The Working Group has not yet discussed whether to include a provision along these lines. The text has been included as a prompt for discussion.		MLST , Art. 3; MLETR , Art. 4; MLL , Art. 5
1. With the exception of articles [...], the provisions of this Law may be derogated from or varied by agreement.			
2. An agreement referred to in paragraph 1 does not affect the rights or obligations of any person who is not a party to the agreement.			
Article 4. General standards of conduct			MLST , Art. 4
A person must exercise its rights and perform its obligations under this Law in good faith and in a commercially reasonable manner.	Again, the Working Group has not yet decided whether the Law should include a provision along these lines, and the text has been included as a prompt for discussion.		
Article 5. International origin and general principles	Again, the Working Group has not yet decided whether the Law should include a provision along these lines, and the text has been included as a prompt for discussion.		MLST , Art. 5; MLETR , Art. 3; MLL , Art. 4; 1988 UN Convention ³ Art. 4; Rotterdam

³ 1988 UN Convention = UN Convention on International Bills of Exchange and International Promissory Notes (1988).

Suggested text	Discussion	Corresponding provisions in national WRLs¹	Relevant provisions in international instruments²
			Rules , Art 2
1. In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith.			
2. Questions concerning matters governed by this Law that are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.			

DRAFTING SUGGESTIONS

Chapter II. Issuance of a warehouse receipt

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
Article 6. Issuance of a warehouse receipt			
<p>A warehouse receipt must be issued by a warehouse operator upon taking possession of the goods [from the depositor] if requested by the depositor.</p>	<p>A slight majority of the Working Group favoured that a warehouse receipt ought to be issued if requested by the depositor; however, the issue should be revisited in conjunction with the definition of a warehouse receipt (Report of second session, para. 16).</p> <p>The transport conventions adopted a similar approach, generally requiring issuance of the document on demand. See, for example, the Rotterdam Rules, Art. 35: “Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper’s option:</p> <p>(a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or</p> <p>(b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the</p>	<p>US: UCC § 7-201(a)</p> <p>Japan: Warehousing Business Act, Art. 13(1)</p> <p>France: Comm. C. Art. L522-24; Art. L 522-37-1</p> <p>Germany: Comm. C. § 475c, para. 1</p>	<p>Hamburg Rules, Art. 14; Rotterdam Rules, Art. 35</p>

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.”		
Article 7. Form of a warehouse receipt			
A warehouse receipt may be issued in paper or electronic form.		US: UCC § 7-202(a) France: Comm. C. Art.L522-25 ; Art. L522-37-2 Germany: Comm. C. § 475c, para. 4	
Article 8. Content of a warehouse receipt			Geneva Convention , Annex I, Chapter I, Art. 1; Rotterdam Rules, Arts. 36, 38, 39.
1. A document is a warehouse receipt for the purposes of this Law only if it:			
(a) Sets out the name of warehouse operator and the location of the warehouse where the goods were deposited;	The Working Group decided that this might be essential information, in the absence of which a document would not qualify as a warehouse receipt (Report of second session, paras. 21, 47).		
(b) Sets out the nature, quantity and quality of the stored goods; and	The Working Group decided that this might be essential information, in the absence of which a document would not qualify as a warehouse receipt (Report of second session, paras. 22, 47).		
(c) Is signed by the warehouse operator.	The Working Group decided that this might be an essential requirement, in the absence of which a	Canada: Draft Uniform	

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	document would not qualify as a warehouse receipt (Report of second session, para. 47).	Documents of Title Act, Part 1(2) , para. 2(g) Germany: Comm. C. § 475c, para. 3 US: UCC § 7-202(b)	
2. A warehouse receipt must contain the following information:		Canada: Draft Uniform Documents of Title Act, Part 1(2) , para. 2 France: Comm. C. Art. L522-24 Germany: Comm. C. § 475c, para. 1 US: UCC § 7-202(b)	
(a) <i>[Information to be determined by the enacting State that identifies the depositor];</i>	At the second session, the Working Group agreed to reconsider the suggested draft, which then required “the name, address, and unique identification number, if any, of the depositor” (Report of second session, para. 20). In order to avoid any discussion, it is proposed to use here the generic notion of information that provides for the identification of the depositor. This allows the enacting State to decide what types of information are appropriate for its jurisdiction (surname, tax number, national identity card number, etc.). The only	US: UCC § 7-201(a) France: Comm. C. Art. L522-24 ; Art. L 522-37-1 Germany: Comm. C. § 475c, para. 1	

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	requirement is that the information achieves reasonable identification, i.e. without ambiguity.		
(b) Whether the warehouse receipt is issued to a named person, to the order of a named person or to bearer;	The Working Group decided that these terms should replace an indication of whether the warehouse receipt was negotiable or non-negotiable (Report of second session, para. 23).		MLST , for example Arts. 14, 16, 26, 46, etc. Rotterdam Rules , Chapter 11
(c) The unique identification number of the receipt; and	The Working Group agreed with these terms (Report of second session, para. 24).		
(d) The date of issue of the receipt.	The Working Group agreed with these terms (Report of second session, para. 24).		
(e) [The amount of the storage fees if they are determined or, if they are only determinable, the elements allowing to calculate them.]	<p>During its second session, the Working Group agreed to revisit the question of whether the indication of storage fees or a reference to the storage agreement should be an essential or an optional term.</p> <p>It could be argued that such an indication is not necessary as long as the existence of such charges may be easily ascertained. Thus, the holder of a warehouse receipt or the person to whom it has been transferred will legitimately and necessarily be aware of the existence of such storage fees and it will be incumbent upon him or her to inquire directly. This approach has the merit of improving the legal certainty of the instrument by avoiding a reference that may be a source of litigation.</p> <p>On the other hand, it may be objected that the storage fees are a significant element and that it is important for the holder of a warehouse receipt or the person to</p>		

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	<p>whom it has been transferred to have immediate and precise knowledge of them through the receipt. The amount of the storage fee should therefore be indicated on the receipt. However, if the indication of the fees does not pose any difficulty when they are fixed, there are cases where the amount of these fees will result from a method of calculation depending on several criteria. In such cases, the calculation methods, which can be complex, must be mentioned on the receipt, which is a source of error and/or a cumbersome formalism.</p> <p>If it is decided that the statement is only optional, then care should be taken to ensure that the absence of a statement is not interpreted as the absence of a fee.</p>		
<p>(f) Whether or not the goods were subject to one or more security interests for the benefit of one or more secured creditors at the time the warehouse receipt was issued.</p>	<p>During its second session, the Working Group agreed to consider the question of whether or not the warehouse receipt should disclose the existence of any security interest in the goods at the time the receipt was issued. This knowledge is important because the warehouse receipt is a document of title to the goods and the goods themselves may be subject to a security interest. It is therefore important that any person to whom the receipt will be transferred be able to know whether or not the goods are free of any security interest.</p> <p>However, it has been argued that this is not necessary since any person to whom the warehouse receipt is to be transferred must, like any other person wishing to acquire or have transferred movable property, consult the security rights registry to ascertain whether or not</p>		

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	<p>there is a security right in the goods. The solution would then be to allow each person wishing to transfer a warehouse receipt to find out on his own. As in the case of fees, this solution would have the merit of improving the legal certainty of the instrument by avoiding a reference that could prove to be a source of litigation.</p> <p>On the other hand, it may be objected that the existence of a security interest in the deposited goods is important information, which in practice may be difficult to obtain. Therefore, in order to improve the information of persons wishing to have a warehouse receipt transferred and to speed up the circulation of the instrument, it may be useful to mention the existence or absence of a security interest in the goods.</p> <p>If it is decided to require this mention in the warehouse receipt, then the receipt must expressly mention either the existence or the absence of any security interest in the deposited goods. A fortiori, the mention of the existence or absence of any security interest cannot be optional. Indeed, the person to whom the receipt is to be transferred must be able to rely entirely on the mention of the existence or the absence of any security interest in the deposited goods.</p> <p>In this case, the Working Group will also have to address the question of the sanction of an erroneous indication (indication of the absence of any security</p>		

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	<p>interest when the goods have been encumbered). Similarly, the Working Group will have to determine whether or not the warehouse operator who includes this mention in the receipt has an obligation to verify (and thus guarantee) the accuracy of the declarations of the depositor by consulting the security rights registry.</p>		
<p>3. If a warehouse receipt does not contain the information required by paragraph 2, [it is null and void].</p>	<p>It was proposed that the Law deal with the question envisaged in Art. 8(1) and (2) in two separate paragraphs, since the two envisaged questions do not arise on the same level. Indeed, during the second session of the Working Group, it was suggested that a distinction be made between essential information and mandatory information. The difficulty is that this distinction does not reflect a degree of sanction (the sanction for failure to provide essential information being more severe than for failure to provide mandatory information). This distinction between essential and mandatory information is in fact concerned with two different issues. The essential information requirement is necessary to determine the very notion of "warehouse receipt" within the meaning of the present Law. A document, even if it is entitled "Warehouse Receipt" by the parties, will not be subject to the Law if it does not contain the information listed in Art. 8(1). (Of course, it may have other effects under other national law.) Clearly, a question of qualification arises here. It is questionable whether this issue should be covered by this chapter or whether it should be dealt with in the definition of "warehouse receipt". The Working Group will have to</p>	<p>US: UCC § 7-202(b) Canada: Draft Uniform Documents of Title Act, Part 1(2)</p>	<p>For example, the Rotterdam Rules, Art. 37 state in Art. 37 that "[t]he absence or inaccuracy of one or more of the contract particulars referred to in its Art. 36, paras. 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record".</p>

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	<p>decide on this point.</p> <p>The notion of mandatory information refers here more classically to the matters whose presence conditions the validity of the warehouse receipt within the meaning of the present Law. Under the drafting presented here for discussion, a receipt, even if it is subject to the Law because it contains the essential information of Art. 8(1), will only be valid if it also contains the information listed in Art. 8(2). If it does not, it will be null and void as stated in Art. 8(3). The Working Group will need to consider whether this is an appropriate dichotomy and, if so, how the consequences should differ as between a document not being a warehouse receipt at all (for failure to comply with Art. 8(1)), or a document being a warehouse receipt but being null and void (for failure to comply with Art. 8(2)).</p> <p>When considering the consequences of missing information on the receipt, the allocation of risk among the parties (depositor, holder or issuer) should be taken into account. If the receipt is invalidated the risk falls on the holder. If the problem results in a damage claim against the issuer but the integrity of the receipt is protected, the loss falls on the issuer.</p>		
4. A warehouse operator may also include in a warehouse receipt:		Canada: Draft Uniform Documents of Title Act, Part 1(2) , para. 3	

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
		Germany: Comm. C. § 475c, para. 2 US: UCC § 7-202(c)	
A mention of the faculty of substitution when the deposited goods are fungible goods and with the consent of the depositor.	This paragraph has been deleted because the question of the disposal/treatment of deposited fungible goods will be dealt with in an article specifically addressing this issue in the chapter on "rights and obligations of the parties".		
(a) A statement of the period of the storage, if it is for a fixed period. In the absence of any indication, the receipt is effective for an indefinite period.	During its second session, the Working Group agreed to reconsider these suggested optional terms at a later stage in relation to the consequences of missing information in a warehouse receipt.		
(b) The name of the insurer, if any, who has insured the goods;	During its second session, the Working Group agreed to reconsider whether this should be suggested as an optional term.		
(c) [The amount of the storage fees if they are determined or, if they are only determinable, how the fees are calculated].	Cf. supra concerning the question of whether an indication of storage feeds is optional or mandatory.		
(d) Any other terms and conditions, as long as they are not contrary to the other mandatory provisions of this Act [and do not affect the obligation to deliver].	During its second session, the Working Group agreed to reconsider these suggested optional terms at a later stage in relation to the consequences of missing information in a warehouse receipt.		
6. If the warehouse receipt does not contain the required information, [it is considered void] [it is considered null] [it cannot be characterised as a warehouse receipt under this Law].			

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
5. An incorrect or insufficient statement of the required information required in a warehouse receipt does not affect the characterisation or the validity of the receipt unless the incorrect or insufficient information would seriously mislead a reasonable person.	It seems reasonable to assume that the rule set out in this paragraph applies in both cases referred to in Art. 8(1) (essential information) and Art. 8(2) (mandatory information). If this is the case, then the two different sanctions attached to these paragraphs should be referred to in this paragraph.		Rotterdam Rules , Art. 37
Article 9. Electronic warehouse receipts	This article provides a functional equivalence rule for the use of warehouse receipts by setting forth the requirements to be met by an electronic record. The Working Group agreed that the content of this suggested article should generally remain in Chapter II (Report of second session, para. 51). The wording of the article will be revised based on the outcome of the Working Group's discussions.		
1. An electronic warehouse receipt that contains the information set out in article 8, paragraphs 1 and 2, shall not be denied legal effect, validity or enforceability on the sole ground that it is in electronic form provided that a reliable method is used:			MLETR , Art. 10
(a) To identify that electronic record as the electronic transferable record;			
(b) To render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and			
(c) To retain the integrity of that electronic record.			
2. The criterion for assessing integrity shall be whether information contained in the electronic			

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
transferable record, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.			
Article 10. Loss of a warehouse receipt	This article has been revised for reconsideration by the Working Group at its third session.		
1. In the event of the loss or destruction of a warehouse receipt [the depositor, or any person to whom the warehouse receipt has been lawfully transferred,] may require the warehouse operator to issue a replacement warehouse receipt, by providing:	The bracketed part might be replaced with “the holder”, depending on how that term will be defined in Chapter I.	France: Comm. C. Art. L522-36 US: UCC § 7-601 Canada: Draft Uniform Documents of Title Act, Part 4(24)	
(a) Such proof of its entitlement to the warehouse receipt; and			
(b) Such indemnity in relation to the issue of the replacement warehouse receipt and security in support of that indemnity,			
as the warehouse operator may reasonably require.			
2. If the warehouse operator refuses to issue a replacement warehouse receipt pursuant to the preceding paragraph, [the depositor or any person to whom the warehouse receipt has been lawfully transferred] may apply to the Court to obtain an order to issue a replacement	The bracketed part might be replaced with “the holder”, depending on how that term will be defined in Chapter I. <i>Question to the Working Group:</i> <ul style="list-style-type: none">• <i>Is this paragraph needed, or should it be</i>		

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
warehouse receipt. In the case of a negotiable warehouse receipt, the claimant shall deposit with the Court adequate security to indemnify the warehouse operator against claims by a lawful holder of the original warehouse receipt.	<i>deleted? Under paragraph 1, the warehouse operator has a legal obligation to issue a replacement warehouse receipt if the conditions are satisfied. If the warehouse operator does not comply with the obligation, then the person wanting the replacement warehouse receipt can always take them to court, in the same way as any person can sue to enforce an obligation owed to it.</i>		

DRAFTING SUGGESTIONS

Chapter IV. Transfer of warehouse receipts. Protected holders and other transferees. Warranties. Miscellaneous provisions regarding transfer

Note: The following provisions for Chapter IV were selected as issues that may need to be addressed in the Model Law. However, it should be highlighted that the Working Group will still need to find a “legal functional equivalent” to express all those concepts in a manner more broadly acceptable among legal systems.

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
Article 11. Transfer of a negotiable warehouse receipt	The Working Group agreed with the use of the terms “negotiable” and “non-negotiable” warehouse receipt and “transfer” (Report of second session, para. 57).		
1. A negotiable tangible warehouse receipt may be transferred:	<p>The suggested text does not distinguish between warehouse receipt transfers for purposes of sale and transfers for purposes of security, which corresponds to the approach adopted by the UN Convention on International Bills of Exchange and International Promissory Notes.</p> <p>It is expected that the applicable secured transactions law of the State would provide for the customary elements of security transfers, such as the requirements for an agreement to create a security right, including in a warehouse receipt. The satisfaction of those requirements may effectuate a transfer of a right, in the form of creation of a security right, effective as between the two parties. In contrast, these provisions deal with a transfer of the warehouse receipt and its effects <i>erga omnes</i>. Most jurisdictions that have modern personal property securities legislation provide that a negotiable document of title and the goods may be pledged by transfer (endorsement and delivery) to the secured creditor without registration. If however the law of the country provides</p>	US: UCC § 7-501	UN Convention on International Bills of Exchange and International Promissory Notes , Chapter III Rotterdam Rules , Chapter 11 MLST , Arts. 1, 14, 26, etc.

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	that all security interests, possessory as well as non-possessory, require registration to perfect the transfer as against third parties, this section would not obviate the need for registration as an addition step in the case of a transfer for purposes of security.		
(a) by endorsement and delivery, if the receipt is issued or endorsed to the order of a named person, and such person is named in the receipt or in the most recent endorsement; or			
(b) by delivery, (i) if the receipt is issued in bearer form, or (ii) if endorsed in blank or to bearer.			
2. If by the terms of the receipt the goods are deliverable to the order of a named person, the delivery of the receipt to such person has the same effect as if the receipt had been transferred to such person.			
3. A negotiable electronic warehouse receipt may be transferred by transfer of control over the electronic warehouse receipt.			
Article 12. Rights of a person to whom a receipt has been transferred			
1. A person to whom a warehouse receipt has been transferred acquires		US: UWRA § 42; UCC § 7-504	

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
<p>such title to the receipt and the goods as the person who transferred the receipt was lawfully able to convey, subject to the terms of the receipt and any agreement between them.</p>			
<p>2. If the warehouse receipt is non-negotiable such person also acquires the right to notify the issuer of the transfer, and upon acknowledgment of the warehouse operator to acquire its direct obligation to hold possession of the goods for him subject to and in accordance with to the terms of the receipt and the storage agreement.</p>	<p>This provision recognises the concept of “non-negotiable” warehouse receipt, which will require a definition. Typically, this means any warehouse receipt that does not meet the definition of “negotiable,” that is, a receipt in bearer or order form.</p> <p>The MLWR recognises two types of transfers: negotiation and assignment. The latter applies to non-negotiable warehouse receipts. Accordingly, there can be a transfer by assignment. The completion of this transfer requires notification of the issuer and its acknowledgment.</p> <p>The parties are the issuer of a warehouse receipt and its assignee. The transferee/assignee of the non-negotiable receipt becomes the beneficiary of the obligation of the issuer to deliver goods.</p>		
<p>3. Prior to notification to the warehouse operator in accordance with paragraph 2, the ownership of the transferee of the goods may be defeated by a [judicial levy of an attachment or execution][analogous claim] upon the goods by a creditor of the transferor, or by a notification to the warehouse operator from the transferor or a subsequent transferee from the transferor of a subsequent sale of the goods by the transferor.</p>			

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
Article 13. Transfer of a negotiable warehouse receipt to a [protected holder] [other type of holder to be specified by the enacting State]	Note by the Secretariat: The wording of this provision still needs to be revised to adopt jurisdiction-neutral expressions.		
A person is a [protected holder] [other type of holder to be specified by the enacting State] of a negotiable warehouse receipt if:	<p>The Working Group agreed to adopt the bracketed terms as they are and leave it to the enacting State to choose the corresponding term used in its legislation (Report of second session, para. 61).</p> <p>The aim of this provision is to expedite trade and financing by commercial parties by reducing the need to verify the practically unknowable chain of transactions once the goods have entered in the established flow of commerce. This is an essential advantage of warehouse receipts, which should be provided by the MLWR.</p>	<p>US: UWRA § 41; UCC § 7-501</p> <p>UCC § 7-102, 7-201, 1-201, 1-204;</p> <p>Germany: Comm. C. § 366 in conjunction with Civil C. § 932</p> <p>France: uncodified theory of appearance and good faith.</p>	MLST , Art. 46 II
(a) the receipt has been transferred to such person in the manner stated in Article 1 and			
(b) such person [took] [acquired] the receipt in good faith, for value and without notice of any [defect in the title of the person who transferred it/any previous holder] [defence against it or any claim to it on the part of any person],	<p>“Acquired” is more descriptive of a commercial transaction than “took”.</p> <p>Unless “good faith” is an appropriately defined term, it probably does not add clarity in many jurisdictions. The term [good faith] may be bracketed in light of the overarching duty to proceed in good faith under the entire law. It might not be possible nor appropriate to define good faith in this model law.</p>		

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	<p>The Working Group agreed to avoid the notion “for value” and instead aim for a jurisdiction-neutral expression, given that the requirement of endorsement being “for value” is a common law requirement that is unfamiliar to many legal systems and enacting civil law countries are not likely to need. It also seems to be redundant in view of the last clause of this article, as a gratuitous transfer would not be in the “ordinary course of business or financing”. It is noted, however, that the latter clause is another notion that many legal systems may have difficulties understanding. One drafting option may be to combine the “for value” requirement with this notion in a separate paragraph as follows:</p> <p style="padding-left: 40px;">“Paragraphs 1 does not apply to a transferee which acquires a warehouse receipt through a gratuitous transaction or otherwise outside the ordinary course of business or financing.”</p> <p>If “defect in the title” is controversial then “any defence against it or any claim to it on the part of any person” may be more acceptable. There might be a difference in these formulations as “defect in the title” may be understood to be limited to property claims, but the suggested alternative might be broader encompassing any, including contractual claims.</p> <p>What would be gained by limiting the claims or defences to “previous holders”? If the rightful claimant is a stranger to the chain of holders, for example if the goods are stolen, and the buyer is aware of the claim, he should not be a protected holder.</p>		

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
unless it is established that the transfer is not in the ordinary course of business or financing.	See comment on this notion under (b) above.		
Article 14. Rights of a [protected holder] [other type of holder to be specified by the enacting State]	Note by the Secretariat: The purpose of this provision is to protect the possession against interference and clarifying that the holder might pledge the rights arising out of the receipt by endorsement or mere delivery of the receipt. The wording of the provision implementing this purpose still needs to be revised to be workable in any legal system.		
1. A [protected holder] [other type of holder to be specified by the enacting State] of a warehouse receipt acquires:	This Article secures to the [protected holder] [other type of holder to be specified by the enacting State] virtually unassailable ownership of the goods and the right of contractual performance of the warehouse operator. This provision is key to the utility of warehouse receipts as vehicles of trade and finance.	US: UCC § 7-502	
(a) the right to quiet possession of the warehouse receipt/title to the receipt;	<p>For the notion of “quiet possession”, the commentary or user’s guide may refer, <i>inter alia</i>, to Article XVI of the Aircraft Protocol to the Cape Town Convention.</p> <p>Under US law and under English law pertaining to bills of lading the document “represents the goods” and therefore has more than an evidentiary role in that possession and transfer of the document effects ownership and transfer of ownership of the goods.</p> <p>The notion of “title” as adopted by US law would not function in this way in most other legal systems. “Title” to the document itself only serves the purpose to protect possession against interference or conversion and clarifying that the holder may pledge the rights arising out of the receipt by endorsement or mere delivery of the receipt.</p> <p>“Exclusive ownership and right of possession, transfer and pledge</p>		

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	<p>of the receipt and all rights and duties covered thereby” could be sufficient if “title” is ambiguous. We could keep "title" for the time being, as any alternative notion, including "exclusive ownership" might be subject to different interpretations. The enacting State should insert a term that is applicable in its domestic regime. The important point is that the transferee becomes the owner of the receipt.</p>		
<p>(b) title to the goods represented by the receipt; and</p>	<p>See the comment concerning the notion of “title” under (a) above.</p> <p>This provision should indicate that the transfer of the receipt has the same effects as the transfer of physical possession of the goods to the holder.</p> <p>Again, if “title” is considered problematic, this could be expressed as “exclusive ownership and right of possession etc”.</p>		
<p>(c) the direct obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, free of any defences or claims by the warehouse operator other than defences or claims that arise under the terms of the receipt or under this Law.</p>			
<p>2. Subject to Article 15, the title and rights acquired by a [protected holder] [other type of holder to be specified by the enacting State] are not defeated even if:</p>	<p>During the second session, several Working Group members expressed concern about the term “defeated”. An alternative wording is suggested below for consideration by the Working Group which aims to use a more jurisdiction-neutral language describing what the protection means:</p>		

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
	"A protected holder acquires the rights arising out of the warehouse receipt notwithstanding the fact that: ..."		
(a) the transfer to the [protected holder] [other type of holder to be specified by the enacting State] or any prior transfer constituted a breach of duty by the person transferring the receipt;			
(b) a previous owner of or claimant to the receipt lost possession or control of the receipt, as a result of fraud, duress, theft, conversion, misrepresentation, mistake, accident or similar circumstances; or	<p>Subsection (b) ensures that the good faith purchaser is protected against claims, by the paramount owner, that it did not authorise the sale of the goods by the holder of the receipt (for example by an agent), or that the receipt was obtained by fraud or theft, or that the goods or receipt have been previously sold or pledged. These are risks that would obstacle the free transfer of the receipt since they would otherwise require substantial investigation on the part of potential purchasers causing delay and expense.</p> <p>This treatment is very similar to the rights granted to "protected holders" under the UN Convention on International Bills of Exchange and International Promissory Notes (Arts. 27, 29).</p>		
(c) the goods or the receipt had been previously sold or transferred to a third person.			
Article 15. Rights of a holder defeated in certain cases			
A warehouse receipt confers no right in goods against a person who, before issuance of the receipt, had a legal interest or a security right in the goods	This provision is drawn from basic equitable principles of agency, estoppel, and the protection of good faith purchasers for value, as applied in many developed economies. That being said, it may be kept in the draft with commentary that it may be dispensed with if	Canada: Draft Uniform Documents of Title Act, Part	

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and who neither	<p>the enacting State considers the provisions redundant of well-accepted principles of civil law in the jurisdiction. There is a good reason why similar provisions are found in the English Factors Acts and Sale of Goods Acts and the Canadian and US legislation, which is that these principles are not considered so obvious, and clarity has a value in creating certainty and reducing litigation.</p> <p>This provision aims to establish that the ownership by a protected holder of a warehouse receipt prevails over almost any interest in the goods that existed prior to the procurement of the receipt if the prior claimant is factually or legally responsible for the goods entering into the stream of commerce.</p> <p>The word “legal interest” may need to be replaced with a more generic term that signifies a property right of a person.</p>	<p>4(19)</p> <p>US: UCC § 7-503</p>	
(a) delivered or entrusted the goods or any receipt covering the goods to the depositor with any actual or apparent authority to ship, store or sell the goods or otherwise grant to such person any power to transfer, express or implied, of such receipt or the goods; nor			
(b) acquiesced in the procurement by the depositor or any representative of such receipt.			
Article 16. Transfer of a warehouse receipt by assignment			
Subject to the terms and conditions in	This provision serves to notify the holders that they ignore the	US: UWRA	UN Convention

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
the warehouse receipt or the associated storage agreement, a warehouse receipt that is not in a form that it may be transferred pursuant to Article 1 of this Law, may be transferred by assignment notified to the issuer of the receipt. The issuer is obliged, upon request by the transferee, to accept the assignment unless the warehouse receipt or storage agreement otherwise provides.	valid storage agreement terms at their peril.	§§ 42,43	on International Bills of Exchange and International Promissory Notes , Arts. 13, 29
Article 17. Warranties on transfer of a warehouse receipt			
1. A person who transfers a warehouse receipt for value warrants to the person to whom it transfers the receipt, unless agreed otherwise, that:	<p>Note by the Secretariat: It is noted, for consideration by the Working Group, that “warranty” is a common law concept that is not known as such in civil law jurisdictions. Therefore, this concept should be avoided in a uniform law instrument. The Working Group is invited to consider whether this provision could be rephrased in terms of a liability provision whereby the transferor indemnifies the transferee against any loss or claim arising out of or relating to (a) forgery or inaccuracy of the warehouse receipt; or (b) any claims by third parties claiming title to the goods.</p> <p>The rationale of this provision is that delivery of goods by use of a warehouse receipt should not limit or displace the ordinary obligations of a seller regarding the sale of goods that arise under other law, such as warranties of merchantability and fitness for intended purpose.</p>	Canada: Draft Uniform Documents of Title Act, Part 4(23) US: UWRA § 43, 46; UCC § 7-507	
(a) the receipt is genuine;			
(b) such person does not know of any fact that would impair the			

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
receipt's validity [or worth]; and			
(c) the transfer is rightful and effective with respect to the title to the receipt and the goods it covers.	<p>Paragraph 1 makes this article applicable to negotiable and non-negotiable receipts.</p> <p><i>Question to the Working Group:</i></p> <ul style="list-style-type: none"> • <i>Should this article apply to negotiable receipts only?</i> 		
<p>2. A collecting bank or other intermediary that is known to be entrusted with warehouse receipts on behalf of another or with collection of a bill of exchange or other claim against delivery of the receipts warrants by the delivery of a receipt only that it is authorised to do so and is acting in good faith, even if the collecting bank or other intermediary has acquired or made advances against the claim or bill of exchange to be collected.</p>		US: UCC § 7-508	UN Convention on International Bills of Exchange and International Promissory Notes , Art. 21
Article 18. Transferor not a guarantor			
A person who transfers a warehouse receipt is not liable by virtue of the transfer for any failure by the warehouse operator or any previous transferor of the receipt to fulfil their obligations in relation to the receipt.	The rationale of this Article is to exclude any continuing obligation on the part of the transferor for the performance by the warehouse receipt issuer.	US: UWRA § 45; UCC § 7-505	
Article 19. Subsequent sale of a warehouse receipt in possession of the seller			

Suggested text	Discussion	Corresponding provisions in national WRLs	Relevant provisions in international instruments
<p>Where a person having sold or encumbered goods that are in a warehouse and for which a negotiable warehouse receipt has been issued, or having sold or encumbered the negotiable receipt covering such goods, continues in possession of the negotiable receipt, the subsequent transfer thereof by that person to any [protected holder] [other type of holder to be specified by the enacting State] shall have the same effect as if the person who acquired the goods or receipt had expressly authorised the subsequent transfer.</p>	<p>The rationale of this provision is that a buyer who has allowed the seller to remain in possession of the goods following purchase assumes the risk that a subsequent purchaser will be misled by the seller in possession and purchase the goods in good faith.</p>	<p>England: Sale of Goods Act § 25(1) US: UWRA § 48</p>	
<p>Article 20. Transfer defeats retention-of-title right of a seller</p>			
<p>Where a negotiable receipt has been issued for goods, no retention-of-title or equivalent right [the enacting State to specify the appropriate right granted to sellers] shall defeat the rights of any [protected holder] [other type of holder to be specified by the enacting State] to whom the receipt has been transferred.</p>	<p>Please see the discussion item concerning the term “defeated” under Art. 14, para. 2, above.</p> <p>The rationale of this Article is that a seller, who has by giving up possession of the goods or warehouse receipt, allowed a negotiable receipt to be outstanding, should not be permitted to defeat one who buys the receipts in good faith.</p> <p>In those jurisdictions that have adopted a PPS Law that recognises the ROT device, whether registered or unregistered as having priority over a document of title covering the same goods, the subject matter of Article 10 will have been prompted. Nevertheless, the provision should stay in the Model Law with appropriate commentary in light of pre-emption.</p>	<p>US: UWRA § 49</p>	