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**Item No. 6 on the agenda: Development of a Model Law on Factoring**

(prepared by the Secretariat)

<i>Summary</i>	<i>Report on the initial steps of the new Factoring Model Law project.</i>
<i>Action to be taken</i>	<i>Note the progress made by the Factoring Model Law Working Group at its first session.</i>
<i>Mandate</i>	<i>Work Programme 2020 - 2022</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<a href="#"><u>UNIDROIT 2019 C.D. (98) 14 rev.2</u></a> <a href="#"><u>Study LVIII A – W.G.1 – Doc. 4</u></a>

**I. INTRODUCTION**

1. The purpose of this document is to update members of the Governing Council on the initial steps taken by the Secretariat in relation to the preparation of a Model Law on Factoring and the progress made by the Working Group at its first session.

**II. BACKGROUND**

2. In December 2018, as a proposal for the UNIDROIT Work Programme 2020-2022, the World Bank suggested that UNIDROIT develop a Model Law on Factoring.<sup>1</sup> The World Bank proposal highlighted three reasons why a UNIDROIT Model Law on Factoring should be developed:

- (i) The use of factoring as an important form of financing increasing access to credit;
- (ii) ongoing constraints in access to credit as a limit on economic growth, particularly in developing countries and emerging markets; and
- (iii) The gap that currently exists in international rules and standards regarding factoring. The proposal noted that existing instruments largely focus on international or cross-

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<sup>1</sup> [UNIDROIT 2019 C.D. \(98\) 14 rev.2](#), p.17.

border transactions and do not provide sufficient guidance to States to develop functional domestic factoring frameworks.<sup>2</sup>

3. At its 98<sup>th</sup> session in May 2019, the UNIDROIT Governing Council approved the project for the 2020-2022 Triennial Work Programme as a high priority project.<sup>3</sup>

4. The purpose of the Model Law is to provide an instrument for States that want to introduce a new factoring law or update their existing laws, but are not yet in a position to undertake a comprehensive secured transactions law reform based on UNCITRAL's instruments. The instrument will consist of a set of black letter rules, accompanied by a limited commentary on each rule to explain its operation.

### **III. ESTABLISHMENT OF THE WORKING GROUP**

5. As consistent with the Institute's established working methodology, the Factoring Model Law is being developed by a Working Group composed of international legal experts representing different legal systems. The Working Group is chaired by Governing Council member Professor Henry Gabriel, and is composed of the following experts:

- (i) Henry Gabriel (Chair) (United States)
- (ii) Giuliano Castellano (Italy)
- (iii) Neil Cohen (United States)
- (iv) Michel Deschamps (Canada)
- (v) Alejandro Garro (Argentina)
- (vi) Louise Gullifer (United Kingdom)
- (vii) Megumi Hara (Japan)
- (viii) Cathy Walsh (Canada)
- (ix) Bruce Whittaker (Australia)

6. In addition, several international, regional and private organisations with expertise in factoring have been invited to observe the Working Group:

- (i) The World Bank Group
- (ii) The United Nations Commission for International Trade Law (UNCITRAL)
- (iii) The Kozolchik National Law Centre (NatLaw)
- (iv) The European Bank for Reconstruction and Development (EBRD)
- (v) The Organization of American States (OAS)
- (vi) The African Export-Import Bank (AFREXIMBANK)
- (vii) Organisation for the Harmonisation of Business Law in Africa (OHADA)

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<sup>2</sup> The World Bank letter noted that the UNCITRAL Model Law on Secured Transactions does provide elaborate asset specific rules for the development of national rules for assignments in security and provides uniform priority rules and registration requirements for all factoring transactions, however the instrument is not sufficient to develop a fully functional national factoring system.

<sup>3</sup> UNIDROIT 2019 C.D. (98) 17, p. 36.

- (viii) Industry Groups
  - (a) Factors Chain International (FCI)
  - (b) World of Open Account (WOA)
  - (c) Secured Finance Network (SFN)

7. As a high priority project on the UNIDROIT Work Programme for the period 2020-2022, the Secretariat intends to complete the Factoring Model Law in the next three years.

- (i) Drafting of the Model Law over four sessions 2020-2021
  - (a) First session: 1-3 July 2020
  - (b) Second session: November or December 2020
  - (c) Third session: First half of 2021
  - (d) Fourth session: second half of 2021
- (ii) Consultations and finalisation 2022
- (iii) Adoption by the Governing Council at its 102<sup>nd</sup> session in May 2023

8. The Working Group will meet twice each year for three days. Meetings will be in Rome, unless extraordinary circumstances require a meeting to be held via videoconference or a partner organisation provides facilities or funding to hold a meeting in a different location. Meetings will be conducted in English without translation.

9. On 11 February 2020, in the margins of the International Secured Transactions Coordination Conference in Cartagena, Colombia, UNIDROIT held a short planning meeting for the Working Group. Seven Working Group members participated in the meeting, as well as observers from the World Bank Group, UNCITRAL, the OAS and the National Law Center. During the planning meeting, the Working Group identified an initial list of issues for discussion at the first Working Group meeting.

#### **IV. FIRST WORKING GROUP MEETING**

10. The first session of the Working Group took place via videoconference between 1 and 3 July 2020. The Working Group was attended by 32 participants, comprising of (i) 9 Working Group Members, (ii) 18 observers from six international, regional and intergovernmental organisations, four industry associations and academia and (iii) 5 members of the UNIDROIT Secretariat.

11. At the first session, the Working Group undertook its work in a friendly, constructive and productive manner. The majority of the meeting was dedicated to discussing the scope of the Model Law, with a particular focus on the following issues:

- (i) Types of receivables to be covered
- (ii) Application to negotiable instruments
- (iii) Application to the assignment of receivables for collection or for the sale of a business
- (iv) Application to outright transfers and security interests
- (v) Application to consumers
- (vi) Application to future receivables
- (vii) Application to different categories of receivable finance

- (viii) Treatment of recourse factoring
- (ix) Treatment of anti-assignment clauses
- (x) Additional functions to be performed by the factor

12. The Working Group made a number of preliminary decisions in relation to the above issues, although most decisions were deferred so that further research could be undertaken by the Secretariat. The Working Group also discussed the content and structure of the Model Law, including issues related to formalities, establishment of priority, treatment of proceeds and conflict of laws. The report of the Working Group's first session is contained in [Study LVIII A – W.G.1 – Doc. 4](#).

13. Further information regarding the Factoring Model Law project and all documents from the first Working Group meeting are available on the UNIDROIT website at <https://www.unidroit.org/work-in-progress/factoring-model-law>.

## **V. ACTION TO BE TAKEN**

14. *The Governing Council is invited to note the Secretariat's work in developing the Model Law on Factoring and the progress made by the Factoring Model Law Working Group at its first session.*