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Item No. 6 on the agenda: Model Law on Warehouse Receipts Project

(prepared by the Secretariat)

<i>Summary</i>	<i>Update regarding the joint UNCITRAL/UNIDROIT project on the development of a Model Law on Warehouse Receipts</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress made since its last session in September 2020 and to authorise the extension of the project for one calendar year</i>
<i>Mandate</i>	<i>Work Programme 2020-2022</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	UNIDROIT 2020 C.D. (99) A.8 ; UNIDROIT 2020 C.D. (99) A.2 ; UNIDROIT 2020 A.G. (79) 10 ; UNIDROIT 2021 - Study LXXXIII – W.G.1 – Doc. 5 ; UNIDROIT 2021 - Study LXXXIII – W.G.2 – Doc. 4

I. INTRODUCTION

1. The purpose of this document is to update members of the Governing Council on the progress made in relation to the preparation of a Model Law on Warehouse Receipts since the 99th session of the Governing Council in September 2020.

II. BACKGROUND

2. Following a request for joint work from United Nations Commission on International Trade Law (UNCITRAL), and upon the Secretariat's proposal to the first meeting of the Governing Council at its 99th session in April/May 2020, the Council unanimously agreed to 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 ([C.D. \(99\) A.8](#), para. 21). UNCITRAL's Commission approved the project at its 53rd session in September 2020 ([UN Doc. A/75/17](#)). The General Assembly of UNIDROIT approved the recommended inclusion of the proposed project with high priority status in the current Work Programme at its 79th session in December 2020 ([A.G. \(79\) 10](#), paras. 39 et seq. in conjunction with para. 47).

3. Warehouse receipts are documents, in paper or in electronic form, issued by warehouse operators that state the ownership of a commodity and may be traded or used as collateral to obtain credit. A supportive legal framework is widely regarded as a prerequisite for a well-functioning warehouse receipts system that can foster transactions and facilitate access to finance, especially in

the agricultural sector and with particular importance for small entrepreneurs. It is envisaged that the Model Law shall consist of a set of black-letter rules covering the private law aspects of warehouse receipts. Importantly, the Model Law will contemplate the issuance and transfer of electronic warehouse receipts, including the use of electronic platforms, distributed ledger technology systems, and other technological mechanisms. It is anticipated that it will be a standalone instrument for adoption by States seeking to reform their national legislation. If deemed instrumental for the adequate implementation and use of the Model Law, consideration to draft a commentary, Guide to Enactment, Users' Guide, or any other complementary text of the sort, would need to be given separately by the competent governance bodies.

III. ESTABLISHMENT OF THE WORKING GROUP

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

- Eugenia Dacoronia (Greece) (Chair)
- Paula All (Argentina)
- Nicholas Budd (United States)
- Adam Gross (United Kingdom)
- Keith Mukami (South Africa)
- Dora Neo (Singapore)
- Jean-François Riffard (France)
- Teresa Rodriguez De Las Heras Ballell (Spain)
- Hiroo Sono (Japan)
- Andrea Tosato (Italy)

5. In addition, several intergovernmental organisations with interdisciplinary expertise in the field of warehouse receipt systems have been invited to participate in the Working Group as observers with the objective to assist in both the development and the implementation of the Model Law once it has been adopted:

- 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)
- World Bank Group (WBG)

6. Finally, several public and private sector stakeholders have been invited to participate in the Working Group as observers, to ensure that the instrument will address the stakeholders' needs:

- 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
- United States Department of State
- VOCA Consult

IV. REVISED TIMELINE FOR THE PROJECT

7. 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. 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 UNICTRAL, it is proposed that the Governing Council grants 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.

V. MEETINGS OF THE WORKING GROUP AND INTERSESSIONAL WORK

8. As planned, the Working Group held two sessions in the first year of the project: on 2–4 December 2020, and on 10–12 March 2021 respectively.

9. The first session took place via videoconference and was attended by 30 participants. The discussions during this session were guided by an Issues Paper (see [Study LXXXIII – W.G.1 – Doc. 3](#)) prepared by the Secretariat in collaboration with several Working Group members, analysing the key elements that should be covered by the Model Law, including:

- definitions;
- legal status and format of warehouse receipts;
- receipt details and form;
- transfer of warehouse receipts and their registration;
- execution and priority of security rights and liens; and
- rights and obligations of the warehouse operator.

10. Furthermore, the Issues Paper provided a brief overview of the relevant international instruments that the Working Group should take into account for the preparation of the Model Law. The Working Group made a number of preliminary decisions on the abovementioned issues, although most decisions were deferred so that further research could be undertaken by the Secretariat. The report of the Working Group's first session is contained in [Study LXXXIII – W.G.1 – Doc. 5](#).

11. Following that first session, the Secretariat set up a Drafting Committee that prepared two suggested draft chapters for the future Model Law: Chapter II “Issue of a warehouse receipt”, which also included draft provisions on the form and content requirements for a warehouse receipt; and Chapter IV “Transfer of warehouse receipts. Protected holders and other transferees. Warranties. Miscellaneous provisions regarding transfer”. An informal subgroup was also created to address selected technological aspects, which collected information on the transfer of electronic warehouse receipts and, more broadly, on possible legislative approaches to address both paper and electronic receipts in the Model Law provisions.

12. The second session was also held via videoconference and was attended by 31 participants. A major part of the meeting was dedicated to discussing the two suggested draft chapters and the technology-specific information that had been prepared by the Drafting Committee and the informal subgroup. The Working Group adopted several decisions in relation to the suggested draft provisions and issues presented for consideration, and invited the Drafting Committee to revise the draft chapters, particularly to ensure the use of jurisdiction-neutral terminology. The report of the second session is contained in [Study LXXXIII – W.G.2 – Doc. 4](#).

13. Following the second Working Group session, the Drafting Committee has revised the suggested draft chapters according to the outcome of the Working Group’s discussions and prepared a new Chapter I “Scope and general provisions”. In parallel, the subgroup on technological aspects has analysed electronic warehouse receipts in more detail. This includes, inter alia, the technological solutions deployed and implemented for electronic warehouse receipts, including their issuance and transfer, together with the legal implications for each of the technological models used to date; the different models regarding the concept of control; and the functions of electronic warehouse receipts registries. In addition, the Secretariat is preparing an overview of the state of discussions concerning transfer and control of digital assets tied to real-world assets—such as electronic warehouse receipts—within the UNIDROIT Digital Assets and Private Law Project as information for the Warehouse Receipts Model Law Working Group. The Secretariat is also drawing on the synergies between these two projects to develop a case study of electronic warehouse receipts as a practical example to illustrate the legal implications of technological models used.

14. The third session of the Working Group on a Model Law on Warehouse Receipts is scheduled for 1–3 September 2021.

15. Further information regarding the Warehouse Receipts Model Law project and all documents from the Working Group meetings are available on the UNIDROIT website at <https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts>.

VI. ACTION TO BE TAKEN

16. *The Governing Council is invited to take note of the progress made in the implementation of the project on developing a Model Law on Warehouse Receipts. Further, the Governing Council is asked to authorise the extension of one calendar year for the duration of the project, with the presentation of the first complete draft in its 102nd session, in May/June 2023.*