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Factoring Model Law Working Group

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MODEL LAW ON FACTORING COMPARISON TABLE

1. This document contains a table that compares the provisions in the preliminary draft Model Law on Factoring (MLF) with the corresponding provisions in the [UNCITRAL Model Law on Secured Transactions](#) (MLST) and the [United Nations Convention on the Assignment of Receivables](#) ('Receivables Convention', or RC). The table also provides comments on various preliminary draft MLF provisions for consideration by the Working Group.
2. This document is based on the comparison table considered by the MLF Working Group at its third session ([UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 3](#)). It has been updated to reflect several matters:
 - a. The decisions made by the Working Group at its third session.
 - b. The decisions made by the Working Group at its intersessional meeting on scope (21 September 2021).
 - c. The draft registry provisions prepared by the registration subgroup in Chapter IV.
3. The preliminary draft MLF should be considered in conjunction with the Issues Paper (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 2) and the preliminary draft Model Law (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 3). Please note that the Annexe A prepared by the registration subgroup is not included in this document and is only included in the preliminary draft Model Law (Doc. 3).
4. For ease of reference, the comparison table currently only provides references to the corresponding articles in the MLST and the RC, rather than reproducing the entire text of the corresponding provisions.
5. The Secretariat is grateful to Mr Bruce Whittaker (University of Melbourne) and Mr Marek Dubovec (Kozolchyk National Law Center (NatLaw)) for their assistance in the preparation of this document.

DRAFT MODEL LAW ON FACTORING

CHAPTER I – SCOPE AND GENERAL PROVISIONS

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article 1 – Scope of application			
1.	This Law applies to [transfers/assignments] of receivables.	The Working Group has yet to decide whether the Law should refer to ‘transfers’ of receivables or to ‘assignments’ of receivables ¹ . If the Working Group decides to use the term ‘assignment’, corresponding changes will then be made throughout the Law to related terms such as ‘transferor’ and ‘transferee’.	Article 1(1)	Article 1(1)
2.	[<i>Application to proceeds – to be discussed.</i>]	Further analysis on the treatment of proceeds is contained in the Issues Paper for the Working Group’s fourth session (W.G.4 – Doc. 2).	Article 1(4)	
3.	Nothing in this Law affects the rights and obligations of a transferor or a debtor under other laws governing the protection of parties to transactions made for personal, family or household purposes.	At WG3, the Working Group decided to retain this article. The Working Group decided that the Guide to Enactment should explain that the application of this article was limited to laws specifically related to consumer protection. ²	Article 1(5)	Article 4(1) Article 4(4)
4.	Nothing in this Law overrides a provision of any other law that limits the transfer of specific types of receivable.	The Working Group has only generally discussed ‘statutory bars’ on transfers, and is yet to reach a conclusion. If those bars were not to be overridden, this provision will be retained. ³ At WG3, the Working Group decided that it was unnecessary to include the second part of the corresponding provision in Article 1(6) of the MLST (‘with the exception of a provision that limits the transfer of a receivable on the sole ground that it is a future receivable, or a part of or an undivided interest in a receivable’) ⁴	Article 1(6)	Article 8(3)
5.	Nothing in this Law affects the rights and obligations of any person under the law governing negotiable instruments.	At WG3, the Working Group decided that the law ‘would not apply to negotiable instruments’ ⁵ . This proposed drafting follows the approach taken by the RC, which is not to exclude negotiable instruments from the	-	Article 4(3).

¹ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 152.

² WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 118.

³ WG1 Report, [Study LVIII A – W.G.1 – Doc. 4 rev. 1](#), para 162.

⁴ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 120.

⁵ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 10.

Art.	Suggested text	Discussion	MLST Article	RC Article
		definition of 'receivable' (as had previously been proposed in the drafting of that definition in this table below) or from the application of the Law in its entirety, but instead to provide that the law relating to negotiable instruments will prevail in the case of any conflict. The Working Group may wish to discuss which approach it prefers.		
	Article 2. Definitions	The corresponding heading in the MLST says 'Definitions and rules of interpretation', but appears to contain only definitions. Article 5 of this chapter deals with interpretation matters.		
	For the purposes of this Law:			
(-)	"Debtor" means a person who owes payment of the receivable, including a guarantor or other person secondarily liable for payment of the receivable.	This is a slightly simplified version of the definition 'debtor of the receivable' in the MLST. At WG3, it was decided that the MLF should use the term 'debtor' rather than 'debtor of the receivable'. ⁶ At WG3, the Working Group decided to retain the definition of 'debtor' in the draft MLF, subject to further discussion at a later session on how the definition would impact on the treatment of guarantors. ⁷	Article 2(i)	
(-)	"Future receivable" means a receivable that arises after the time a transfer agreement is entered into, whether the contract giving rise to the receivable: (i) is in [existence/effect] at the time the transfer agreement is entered into; or (ii) only comes into [existence/effect] after that time. OR	Three definitions of 'future receivable' have been prepared for the consideration of the Working Group, based on its decision at WG3. ⁸		

⁶ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 123.

⁷ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 126.

⁸ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), paras 26-27.

Art.	Suggested text	Discussion	MLST Article	RC Article
	<p>“Future receivable” means a receivable that arises after the time a transfer agreement is entered into, whether or not the contract giving rise to the receivable is in [existence/effect] at that time.</p> <p>OR</p> <p>“Future receivable” means a receivable that arises after the time a transfer agreement is entered into. This includes a receivable that arises under a contract that is not in [existence/effect] at that time.</p>			
(-)	<p>“Proceeds” of a receivable means whatever is received in respect of the receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods.</p>	<p>It was decided at the second meeting of the Working Group that the Model Law should include a definition of ‘proceeds’, and that it should be a ‘middle-ground’ approach between the MLST and the RC (without deciding what that ‘middle-ground’ should look like).⁹</p> <p>This draft is taken from the RC, as a basis for further discussion. Issues to consider include:</p> <ul style="list-style-type: none"> - whether it should be limited to cash proceeds (and if so, what ‘cash’ means in this context); and - whether it should capture only proceeds ‘in total or partial payment or other satisfaction’ of the receivable, or should include (e.g.) insurance claims or proceeds of disposition of the receivable (whether voluntarily or by operation of law). 	Article 2(bb)	Article 5(j)
(-)	<p>“Receivable” means a contractual right to payment of a sum of money:</p>	<p>At the intersessional meeting on scope, the Working Group decided to provisionally include a narrow definition of ‘receivable’ in Article 2 of the draft MLF.</p> <p>The Working Group also decided that the MLF should only apply to contractual receivables, and thus would not apply to non-contractual receivables such as tort receivables and tax receivables.</p>	Article 2(dd)	Article 2(a)

⁹ WG2 Report, [Study LVIII A – W.G.2 – Doc. 4](#), para 199.

Art.	Suggested text	Discussion	MLST Article	RC Article
		The MLST uses the expression ‘right to payment of a monetary obligation’. That is arguably a slightly jumbled formulation, as one technically holds either a right to <i>discharge</i> of a monetary obligation, or a right to <i>payment</i> of a sum of money. The proposed language is also closer to the corresponding text in the RC. It does however use the term ‘money’, which may raise questions about exactly this means (e.g. does it include cryptocurrencies?).		
	(i) Arising from a contract for the supply or lease of goods or services [other than a contract for the sale or lease of immovable property]	At the intersessional meeting on scope, the Working Group decided that receivables arising from a contract for the sale or lease of immovable property should not be included within the scope of the MLF. The bracketed text reflects the language used in the corresponding articles in the MLST and the Receivables Convention. The Working Group is invited to consider whether is necessary.	Article 13(3)(a)	Article 9(3)(a)
	(ii) Arising from a contract for the sale, lease or licence of industrial or other intellectual property or proprietary information; or			
	(iii) Representing the payment obligation for a credit card transaction.			
	[others]	At the intersessional meeting on scope, the Working Group briefly discussed ‘financial receivables’ excluded by Article 4(2) of the Receivables Convention, but did not reach a conclusion on their inclusion or exclusion. It was noted that most of the types of financial receivables listed in Article 4(2) of the RC would be automatically excluded through the narrower definition of ‘receivable’ adopted by the Working Group.		
(-)	“Transfer” of a receivable means:	The Working Group may wish to consider whether this text should be retained here (the approach taken in the MLST), or moved to Article 1(1) (the approach taken in the RC).	Article 2(kk)	Article 2(a)
	(i) an outright transfer of the receivable by agreement; and	This is to exclude transfers by operation of law. See also the discussion of the definition of ‘receivable’ earlier in this table, with respect to non-contractual rights to payment. ¹⁰	Article 2(kk) (ii)	

¹⁰ WG1 Report, [Study LVIII A – W.G.1 – Doc. 4 rev. 1](#), paras 11-28.

Art.	Suggested text	Discussion	MLST Article	RC Article
	(ii) A transfer of the receivable by agreement, or the creation of an interest in the receivable by agreement, in either case to secure payment or other performance of an obligation, regardless of the way in which the parties have described the transaction, the status of the transferor [or transferee] or the nature of the secured obligation.	<p>This captures the creation of an interest in a receivable by way of security. This was not discussed at the first meeting, at least not in depth. The text is included as a prompt for further discussion.</p> <p>The corresponding definition in the MLST (of 'security right') divides the subject matter up differently, by dealing first with in-substance security rights (whether or not by way of transfer), and then with outright transfers of receivables. That reflects the fact that the primary focus of the MLST is on security rights, not transfers. For the Model Law, however, the primary focus is on outright transfers, not on security rights <i>per se</i>. The proposed drafting here reflects this.</p> <p>The definition of 'security interest' in the MLST refers to the status of 'the grantor or secured creditor'. To properly reflect this, it is suggested that 'or transferee' be added to subsection (ii).</p>	Article 2(kk) (i)	
(-)	<p>"Transfer agreement" means an agreement providing for the transfer of a receivable that:</p> <p>(i) is [in/evidenced by] a writing that is signed by the transferor;</p> <p>(ii) identifies the transferor and the transferee; and</p> <p>(iii) describes the receivable in a manner that reasonably allows its identification.</p>	<p>The corresponding definition in the MLST (of 'security agreement') repeats the substance of the subparagraphs of the definition of 'security right', i.e. the express inclusion in the law of outright transfers of receivables, in addition to in-substance security rights. Given the way in which we define 'transfer' of a receivable, it is not clear that this is necessary.</p> <p>The proposed text also cross-refers to the requirements for a transfer agreement that are set out in Article 6(4). The MLST does not do this in the corresponding definition of security agreement, but instead simply says in its Article 6(3) that a security agreement 'must' comply with the requirements set out in the Article. The intention behind Article 6(3) of the MLST no doubt is that an agreement can only be a security agreement for the purposes of the MLST if it complies with those requirements, but the drafting leaves this less than completely clear. The proposed drafting of the definition of transfer agreement removes the uncertainty.</p>	Article 2(jj)	
(-)	"Transferee" means a person to whom or in whose favour a receivable is transferred.	The dichotomy of having both 'to whom' and 'in whose favour' is intended to capture both limbs of the definition of transfer (i.e. <i>transfer</i> of a receivable to a transferee, or <i>creation</i> of a security right <i>in favour</i> of a transferee).	Article 2(ff)	Article 2
(-)	"Transferor" means a person who transfers a receivable.		Article 2	
(-)	"Writing" includes an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.	The draft definition comes from the MLST. The corresponding definition in the RC includes the following explanation of what can constitute the 'signing' of a writing:	Article 2 (nn)	Article 5(c)

Art.	Suggested text	Discussion	MLST Article	RC Article
		<p>'Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person's approval of the information contained in the writing.'</p> <p>The Working Group may wish to consider whether the Model Law should include an equivalent explanation as well.</p>		
	Article 3. Party autonomy	The proposed text for this Article is materially identical to the corresponding provisions in the MLST.		
1.	With the exception of Articles [...], the provisions of this Law may be derogated from or varied by agreement.		Article 3(1)	
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 3(2)	
3.	Nothing in this Law affects any agreement to use alternative dispute resolution, including arbitration, mediation, conciliation and online dispute resolution.	At WG3 the Working Group decided retain this article. ¹¹	Article 3(3)	
	Article 4. General standards of conduct	The proposed text for this Article is identical to the corresponding provision in the MLST.		
	A person must exercise its rights and perform its obligations under this Law in good faith and in a commercially reasonable manner.		Article 4	
	Article 5. International origin and general principles	<p>The proposed text for this Article is identical to the corresponding provisions in the MLST.</p> <p>It also reflects Article 4 of the UNIDROIT Model Leasing Law, so its inclusion would be consistent with the model law drafting conventions of UNIDROIT.</p>		

¹¹ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 176.

Art.	Suggested text	Discussion	MLST Article	RC Article
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.]	<p>The Working Group did not reach a consensus on Article 5. The Working Group decided to place Article 5 in square brackets for further discussion at a future session.¹²</p> <p>The UNIDROIT Warehouse Receipts Working Group recently Article 5(1) of the MLST, and considered deleting of 'and the observance of good faith' from the draft Model Law on Warehouse Receipts.</p>	Article 5(1)	Article 7(1)
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.]	The Working Group did not reach a consensus on Article 5. The Working Group decided to place Article 5 in square brackets for further discussion at a future session. ¹³	Article 5(2)	Article 7(2)

¹² WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 182.

¹³ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 182.

DRAFT MODEL LAW ON FACTORING**CHAPTER II – TRANSFERS OF RECEIVABLES**

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article 6. Requirements for the transfer of a receivable			
1.	A receivable may be transferred by a transfer agreement, provided that the transferor has rights in the receivable or the power to transfer it.		Article 6(1)	Article 8
2.	A transferor may transfer:	Article 8 of the MLST also contains Article 8(a), which says that a security right may encumber 'any type of movable asset'. As this law deals only with receivables, it did not seem necessary to include an equivalent provision here. Note that Article 8(1) of the RC that uses a different drafting technique, consistent with its more limited aspirations.	Article 8	
	(a) a part of or an undivided interest in receivables;		Article 8(b)	
	(b) a generic category of receivables; and	The Working Group may wish to consider whether this is necessary, or whether the fact that a person can transfer all of their receivables, together with the reference to 'generic category' in paragraph (5) of this Article, make it sufficiently clear that a person can transfer something less, like a category.	Article 8(c)	
	(c) [all of its receivables.]	While this text is consistent with the corresponding provision in the MLST, the Working Group may wish to discuss whether this provision is necessary on the basis that Article 6(4) already makes it clear that a transferor may transfer all of its receivables.	Article 8(d)	
3.	A transfer agreement may provide for the transfer of a future receivable, but the transfer occurs only when the transferor acquires rights in the receivable or the power to transfer it.	It was suggested at the second meeting of the Working Group that it should be clarified that 'future receivable' covers both future receivables arising under an existing contract, and future receivables arising under future contracts. ¹⁴ The Working Group is invited to consider the three possible definitions of 'future receivable' in Article 2 of the draft MLF.	Article 6(2)	
4.	Without limiting paragraph (iii) of the definition of "transfer agreement" in Article 2, a description of receivables in a transfer agreement will be sufficient		Article 9	

¹⁴ WG2 Report, [Study LVIII A – W.G.2 – Doc. 4](#), paras 10-15.

Art.	Suggested text	Discussion	MLST Article	RC Article
	for the purposes of Article 2 paragraph (iii) if it indicates that the receivables consist of all of the transferor's receivables, or all of the transferor's receivables within a generic category.			
	Article 7 - Proceeds			
1.	The right of the transferee of a receivable extends to the receivable's identifiable proceeds.	The Working Group discussed this topic at its first meeting, but without coming to a view on how it should be handled. This text is included as a starting point for further discussion. ¹⁵	Article 10(1)	Article 14
	Article 8 – Contractual limitations on the transfer of receivables	The suggested text for Article 8 is materially identical to the corresponding text in the MLST. It is provided as a starting point for discussion.		
1.	A transfer of a receivable is effective notwithstanding any agreement [between the initial or any subsequent transferor and the debtor or any transferee] limiting in any way the transferor's right to transfer the receivable.	The text in square brackets is in both the MLST and RC precedents. The Working Group may wish to consider, however, whether it is needed.	Article 13(1)	Article 9(1)
2.	Neither a transferor nor a transferee is liable to any person for breach by the transferor of an agreement referred to in paragraph 1, and the other party to the agreement may not avoid the contract giving rise to the receivable or the transfer agreement on the sole ground of the breach of that agreement. A person that is not a party to the agreement referred to in paragraph 1 is not liable for the transferor's breach of the agreement on the sole ground that it had knowledge of the agreement.	The Working Group decided at its first meeting that a debtor should not be able to sue a transferor at all for breaching an anti-assignment clause. ¹⁶ That goes beyond the language of Article 13(2) of the MLST. ¹⁷ As a result of this change in approach from the MLST, it may be that the final sentence of this paragraph is no longer needed.	Article 13(2)	Article 9(2)
	Article 9. Personal or property rights securing or supporting payment of a receivable			
1.	A transferee of a receivable has the benefit of any personal or property right that secures or supports payment of the receivable without a new act of transfer. If that right is transferable under the law	This is a topic that has not yet been considered in detail by the Working Group. The suggested text is materially the same as the corresponding	Article 14	Article 10

¹⁵ WG1 Report, [Study LVIII A – W.G.1 – Doc. 4 rev. 1](#), paras 214-219.

¹⁶ WG1 Report, [Study LVIII A – W.G.1 – Doc. 4 rev. 1](#), para 162.

¹⁷ WG1 Report, [Study LVIII A – W.G.1 – Doc. 4 rev. 1](#), para 162.

Art.	Suggested text	Discussion	MLST Article	RC Article
	governing it only with a new act of transfer, the transferor is obliged to transfer the benefit of that right to the transferee.	provision in the MLST and is provided here as a starting point for discussion. ¹⁸		
2.	A right is transferred under paragraph 1 notwithstanding any agreement, between the transferor and the debtor or other person granting that right, that limits in any way the transferor's right to transfer the receivable or the right that secures or supports payment of the receivable.	<p>At WG2, the Working Group also discussed but did not decide whether 'anti-assignment override' rules should apply to supporting rights as well, along the lines of Article 10 of the RC.¹⁹</p> <p>At WG3, the Working Group decided that the MLF should provide for a complete override of any restrictions on transfers of supporting rights to ensure the approach to overriding AACs for supporting rights was aligned with the approach to overriding AACs on the transfers of the receivables themselves. It was agreed that the rule in the MLF providing for an override on AACs for supporting rights could be modelled on Article 10(2) of the Receivables Convention.²⁰</p>	-	Article 10(2)

¹⁸ WG2 Issues Paper, [Study LVIII A – W.G.2 – Doc. 2](#), para 31.

¹⁹ WG2 Report, [Study LVIII A – W.G.2 – Doc. 4](#), paras 28 – 47.

²⁰ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 24.

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CHAPTER III – MAKING A TRANSFER OF A RECEIVABLE EFFECTIVE AGAINST THIRD PARTIES

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article 10. Registration			
1.	A transfer of a receivable is only effective against third parties if a notice with respect to the transfer is registered in the Registry.	For some aspects of registration, see Part I of the Issues Paper for the Second Session of the Working Group (Study LVIII A – W.G.2 – Doc. 2)	Article 18(1)	
2.	If the third-party effectiveness of a transfer lapses, third-party effectiveness may be re-established in accordance with paragraph 1, but the transfer is effective against third parties only as of that time.	This provision may not be necessary, and the consequence of a lapse may be explained in a commentary.	Article 21	
	Article 11. Proceeds			
	[<i>To be discussed.</i>]		Article 19	Article 14
	Article 12. Continuity in third-party effectiveness upon a change of the applicable law to this Law	At WG3, the Working Group reaffirmed its previous decisions in relation to conflicts of laws and decided that Article 12 of the draft MLF should remain consistent with the approach in Article 23 of the MLST ²¹	Article 23	
1.	If a transfer is effective against third parties under the law of another State and this Law becomes applicable, the transfer remains effective against third parties under this Law if it is made effective against third parties in accordance with this Law before the earlier of:			
	(a) the time when third-party effectiveness would have lapsed under the law of the other State; and			
	(b) the expiry of [a short period of time to be specified by the enacting State] after this Law becomes applicable.			

²¹ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 72.

Art.	Suggested text	Discussion	MLST Article	RC Article
2.	If a transfer continues to be effective against third parties under paragraph 1, the time of third-party effectiveness is the time when it was achieved under the law of the other State.			

DRAFT MODEL LAW ON FACTORING
CHAPTER IV – THE REGISTRATION SYSTEM

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article 13. Establishment of the Registry			
	The rules for the operation of the Registry [and the effect of registration or non-registration of a notice with respect to a receivable] are set out in [Annexe A].	This rule has been proposed by the registration subgroup. The substantive registry rules are in Annexe A (which is not included in this table but is included in the draft Model Law on Factoring (W.G.4 – Doc. 3)).	Article 28	

DRAFT MODEL LAW ON FACTORING**CHAPTER VI – RIGHTS AND OBLIGATIONS OF THE PARTIES**

Art.	Suggested text	Discussion	MLST Article	RC Article
	Section I. Transferor and transferee	A number of provisions in the RC that are referenced in this Section (such as Articles 12(1) and 12(2)) contain text along the lines of 'Unless otherwise agreed between the assignor and the assignee,...' This language will not be needed in those provisions if the Working Group agrees to retain proposed Article 3(1) in Chapter I, and so has not been included at this stage.		
	Article (1). Rights and obligations of the transferor and the transferee		Article 52	Article 11
1.	The mutual rights and obligations of the transferor and the transferee arising from their agreement are determined by the terms and conditions set out in that agreement, including any rules or general conditions referred to therein.		Article 52(1)	Article 11(1)
2.	The transferor and the transferee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.		Article 52(2)	Article 11(2)-(3)

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article (2). Representations of the transferor		Article 57	Article 12
1.	The transferor of a receivable represents, as at the time of the transfer, that:	This text has been modified somewhat from the corresponding provisions in the MLST and the RC, in order to accommodate future receivables, as discussed at the Second meeting of the Working Group. ²²	Article 57(1)	Article 12(1)
(a)	The transferor has the right to transfer the receivable;		Article 57(1)	Article 12(1)(a)
(b)	The transferor has not previously transferred the receivable to another transferee; and		Article 57(1)(a)	Article 12(1)(b)
(c)	The debtor does not and will not have any defences or rights of set-off.		Article 57(1)(b)	Article 12(1)(c)
2.	The transferor does not represent that the debtor has, or will have, the ability to pay.		Article 57(2)	Article 12(2)
	Article (3). Right to notify the debtor		Article 58	Article 13
1.	The transferor, the transferee or both may send the debtor notification of the transfer and a payment instruction, but after notification of the transfer has been received by the debtor only the transferee may send a payment instruction.	The Working Group may wish to discuss whether the drafting of this article could be improved, possibly by providing that 'a payment instruction sent by a person other than a transferee is ineffective'.	Article 58(1)	Article 13(1)
2.	Notification of a transfer or payment instruction sent in breach of an agreement between the transferor and the transferee is not ineffective for the purposes of Article (7), but nothing in this Article affects any obligation or liability of the party in breach for any damages arising as a result of the breach.	While Chapter VI Article 3(2) is consistent with the corresponding provision in the MLST, the Working Group may wish to give this article further consideration.	Article 58(2)	Article 13(2)

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 WG2 Report, [Study LVIII A – W.G.2 – Doc. 4](#), paras 10-15.

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article (4). Right to payment	<p>In discussing this article, the Working Group should consider the analysis on proceeds in the Issues Paper (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 2).</p> <p>The Working Group will need to consider whether the words in square brackets in paragraphs (a), (b) and (c) should be deleted.</p> <p>Article 14 of the RC refers (most of the time) to an ‘assigned receivable’, rather than just a ‘receivable’. The Working Group may wish to consider whether the longer formulation should be used in this Article as well.</p>	Article 59	Article 14
1.	As between the transferor and the transferee, whether or not notification of the transfer has been sent:		Article 59(1)	Article 14(1)
(a)	If payment with respect to the receivable is made to the transferee, the transferee is entitled to retain the proceeds of payment [and goods returned in respect of the receivable];		Article 59(1)(a)	Article 14(1)(a)
(b)	If payment in respect of the receivable is made to the transferor, the transferee is entitled to the proceeds [and also to goods returned to the transferor in respect of the receivable]; and		Article 59(1)(b)	Article 14(1)(b)
(c)	If payment in respect of the receivable is made to another person over whom the transferee has priority, the transferee is entitled to payment of the proceeds of the payment [and to any asset returned to that person with respect to the receivable].		Article 59(1)(c)	Article 14(1)(c)
2.	The transferee may not retain more than the value of its right in the receivable.		Article 59(2)	Article 14(2)

Art.	Suggested text	Discussion	MLST Article	RC Article
	Section II. Debtor			
	Article (5). Principle of debtor protection	The RC uses a defined term ('original contract') to refer to the contract that gives rise to the receivable. The Working Group may wish to consider whether the Model Law should use the same approach, or follow the approach taken in the MLST.	Article 61	Article 15
1.	Except as otherwise provided in this Law, a transfer does not [without the consent of the debtor,] affect the rights and obligations of the debtor, including the payment terms contained in the [original contract/contract giving rise to the receivable].	Similar to the point made at the start of this table, the Working Group may consider that the words in square brackets are not needed, if the Working Group agrees to retain proposed Article 3(1) in Chapter 1.	Article 61(1)	Article 15(1)
2.	A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:		Article 61(2)	Article 15(2)
(a)	The currency of payment specified in the [original contract/contract giving rise to the receivable]; or		Article 61(2)(a)	Article 15(2)(a)
(b)	The State specified in the [original contract/contract giving rise to the receivable] in which payment is to be made to a State other than that in which the debtor is located.		Article 61(2)(b)	Article 15(2)(b)

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article (6). Notification of the debtor		Article 62	Article 16
1.	Notification of the transfer or a payment instruction is effective when received by the debtor if it [reasonably identifies the receivable and the transferee, and] is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the transfer or a payment instruction is in the language of the [original contract/contract giving rise to the receivable].	<p>At WG3, the Working Group agreed that the MLF should include the elements for effective payment instructions set out in Article 62 of the MLST.²³</p> <p>At its second meeting, the Working Group agreed that this Article should be based on Article 16 of the RC. The text in square brackets in the first sentence is not in Article 16, but is in the definition of 'notification' in RC Article 5 instead. In contrast, the MLST has a briefer definition of 'notification of a security right in a receivable', and instead includes the square-bracketed text in the MLST Article 62(1) itself. The Working Group may wish to consider what approach should be taken in the Model Law.²⁴</p>	Article 62(1)(2)	Article 16(1)
2.	Notification of the transfer or a payment instruction may relate to receivables arising after notification.		Article 62(3)	Article 16(2)
3.	Notification of a transfer constitutes notification of all prior transfers.	<p>The corresponding provision in Article 62 of the MLST is somewhat more expansive. The Working Group may wish to consider which approach should be used in the Model Law.</p> <p>In addition, Article 16(3) of the RC refers to notification of a 'subsequent' assignment. The Working Group may also wish to consider whether the word 'subsequent' is needed, or whether it could be left out (on the basis that it must by necessity be 'subsequent' to the prior transfers).</p>	Article 62(4)	Article 16(3)

²³ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 63.

²⁴ WG2 Report, [Study LVIII A – W.G.2 – Doc. 4](#), paras 82-89.

Art.	Suggested text	Discussion	MLST Article	RC Article
	Article (7). Debtor's discharge by payment		Article 63	Article 17
1.	Until the debtor receives notification of the transfer, it is [entitled to be] discharged by paying in accordance with the [original contract/contract giving rise to the receivable].	At WG3, the Working Group decided that the elements covered by Article 17 of the RC and 63 of the MLST were appropriate for inclusion in the MLF. ²⁵ The Working Group may wish to consider whether the first set of words in square brackets (which are in the RC, but not the MLST) are needed.	Article 63(1)	Article 17(1)
2.	After the debtor receives notification of the transfer, subject to paragraphs 3 to 8, the debtor is discharged only by paying the transferee or, if otherwise instructed in the notification [of the transfer] or subsequently by the transferee in a writing received by the debtor, in accordance with that payment instruction.	The Working Group may wish to consider whether the words in square brackets (which are in the RC, but not the MLST) are needed. The Working Group may also wish to consider whether the text starting with 'or subsequently' is needed, or whether the subsequent writing in question would be a payment instruction and so covered already, by paragraph 3.	Article 63(2)	Article 17(2)
3.	If the debtor receives more than one payment instruction relating to a single transfer of the same receivable by the same transferor, the debtor is discharged by paying in accordance with the last payment instruction received from the transferee before payment.		Article 63(3)	Article 17(3)
4.	If the debtor receives notification of more than one transfer of the same receivable made by the same transferor, it is discharged by paying in accordance with the first notification received.	This article addresses multiple transfers between the same parties.	Article 63(4)	Article 17(4)
5.	If the debtor receives notification of a transfer by a person to whom the receivable has been transferred, it is discharged by paying in accordance with the notification of that transfer or, in the case of a series of such transfers, the last of those transfers.	This article has been amended in an attempt to better distinguish between chains of transfers between different parties and multiple transfers between the same parties, as requested by the Working Group	Article 63(5)	Article 17(5)

²⁵

WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 38.

Art.	Suggested text	Discussion	MLST Article	RC Article
		<p>at WG3.²⁶ This article addresses chains of transfers between different parties.</p> <p>There are some differences in approach between Article 17(5) of the RC and Article 63(5) of the MLST.</p> <p>The Working Group may also wish to consider whether this paragraph should be subject to paragraph 4.</p>		
6.	<p>If the debtor receives notification of the transfer of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this Article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.</p>		Article 63(6)(7)	Article 17(6)
7.	<p>If the debtor receives notification of a transfer from the transferee, the debtor is entitled to request the transferee to provide within a reasonable period of time adequate proof of the transferee's claim to the receivable. Unless the transferee does so, the debtor is discharged by paying in accordance with this Article as if the notification had not been received. Adequate proof of a transfer includes but is not limited to any writing emanating from the transferor and indicating that the transfer has taken place.</p>	<p>At WG3, the Working Group decided that Article 7 of the draft MLF should be amended to allow for the debtor to request further information in relation to whether they were under an obligation to pay pursuant to the first or the subsequent notification, according to whether it was a chain of transfers or multiple transfers between the same parties.²⁷</p> <p>This article has been amended to try to implement the Working Group's decision. The Working Group may wish to discuss whether the proposed drafting is sufficient.</p>	Article 63(8)	Article 17(7)
8.	<p>This Article does not affect any other ground on which payment by the debtor to the person entitled to</p>		Article 63(10)	Article 17(8)

²⁶ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 39.

²⁷ WG3 Report, [Study LVIII A – W.G.3 – Doc. 4](#), para 52.

Art.	Suggested text	Discussion	MLST Article	RC Article
	payment, to a competent judicial or other authority, or to a public deposit fund, discharges the debtor.			
	Article (8). Defences and rights of set-off of the debtor		Article 64	Article 18
1.	In a claim by the transferee against the debtor for payment of the [transferred] receivable, the debtor may raise against the transferee all defences and rights of set-off arising from the [original contract/contract giving rise to the receivable], or any other contract that was part of the same transaction, of which the debtor could avail itself as if the transfer had not been made and the claim were made by the transferor.	Similarly to the question posed in relation to Article (4), the Working Group may wish to consider whether the word 'transferred' is needed.	Article 64(1)(a)	Article 18(1)
2.	The debtor may raise against the transferee any other right of set-off, provided that was available to the debtor at the time it received the notification.		Article 64 (1)(b)	Article 18(2)
3.	[Notwithstanding paragraphs 1 and 2, defences and rights of set-off that the debtor may raise pursuant to Article [9 or 10] against the transferor for breach of an agreement limiting in any way the transferor's right to transfer the receivable are not available to the debtor against the transferee.]	The Working Group may consider that this paragraph is not needed, if it forms the view that anti-assignment clauses should be completely ineffective, in that they do not preclude a transfer but also that a breach does not give rise to any actionable claims at all.	Article 64(2)	Article 18(3)
	Article (9). Agreement not to raise defences or rights of set-off		Article 65	Article 19
1.	The debtor may agree with the transferor in a signed writing not to raise against the transferee the defences and rights of set-off that it could raise in accordance	The second sentence of this provision is included in Article 19(1) of the RC but not in Article 65(1) of the MLST. The Working Group may wish to consider whether the second sentence is needed, or whether it is sufficiently covered by the first sentence.	Article 65(1)	Article 19(1)

Art.	Suggested text	Discussion	MLST Article	RC Article
	with Article (8). [Such an agreement precludes the debtor from raising against the transferee those defences and rights of set-off].			
2.	The debtor may not waive defences:			Article 19(2)
(a)	Arising from fraudulent acts of the transferee; or			Article 19(2)(a)
(b)	Based on the debtor's incapacity.			Article 19(2)(b)
			Article 65(3)	
3.	Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the transferee is determined by Article (10), paragraph 2.		Article 65(2)	Article 19(3)
	Article (10). Modification of the [original contract/contract giving rise to a receivable]		Article 66	Article 20
1.	A modification of the [original contract/contract giving rise to a receivable] that is concluded before notification of the transfer between the transfer and the debtor and that affects the transferee's rights is effective as against the transferee, and the transferee acquires corresponding rights.	The beginning of this paragraph has been adjusted to track the Article heading more closely. Other adjustments are designed to improve its readability.	Article 66(1)	Article 20(1)
2.	An agreement concluded after notification of the transfer between the transferor and the debtor that affects the transferee's rights is ineffective against the transferee unless:		Article 66(2)	Article 20(2)

Art.	Suggested text	Discussion	MLST Article	RC Article
(a)	The transferee consents to it; or		Article 66(2)(a)	Article 20(2)(a)
(b)	The receivable is not fully earned by performance and [either the modification is provided for in the [original contract/contract giving rise to the receivable] or,] in the context of [the original contract/that contract], a reasonable transferee would consent to the modification.	The Working Group may wish to consider what type of modification is contemplated by the text in square brackets.	Article 66(2)(b)	Article 20(2)(b)
3.	Paragraphs 1 and 2 do not affect any right of the transferor or the transferee arising from breach of an agreement between them.		Article 66(3)	Article 20(3)
	Article (11). Recovery of payments			
	Failure of the transferor to perform the [original contract/ contract giving rise to the receivable] does not entitle the debtor to recover from the transferee a sum paid by the debtor to the transferor or the transferee.		Article 67	Article 21

MODEL LAW ON FACTORING**DRAFTING SUGGESTIONS FOR CHAPTER VII – COLLECTION AND ENFORCEMENT**

Art.	Suggested text	Discussion	MLST Article
	A. Outright transfers	<p>A number of provisions in this Chapter deal only with outright transfers, or only with security transfers. In doing so, the drafting follows the dichotomy employed in the MLST. The Working Group may wish to consider whether these terms should be defined, for example using the distinction drawn between paragraphs (a) and (b) of the draft definition of 'transfer' in Article 2 of Chapter I. (The proposed drafting for this Chapter assumes that this will be done.)</p> <p>As an alternative, the Working Group may wish to consider whether this Chapter needs to have separate provisions for outright vs security transfers (given that they are largely identical), or whether the bulk of the Articles can be amalgamated.</p> <p>The Working Group may also wish to consider how this Chapter should apply if the collection or enforcement is to take place after the relevant receivables have been converted into proceeds, so that the transferee is no longer enforcing against receivables as such.</p>	
	Article (1). Collection of payment under an outright transfer		Article 83
1.	The transferee under an outright transfer of a receivable is entitled to collect the receivable at any time after payment becomes due.	<p>As the Model Law only addresses transfers by agreement (see the definition of 'transfer' in Article 2 of Chapter I), the words 'by agreement' may not be needed.</p> <p>The other suggested amendments are intended to align the structure of the paragraph more closely to the corresponding paragraph in Article (2) below, for consistency.</p>	Article 83(1)
2.	The transferee exercising the right to collect under paragraph 1 is also entitled to enforce any personal or property right that secures or supports payment of the receivable.		Article 83(2)

Art.	Suggested text	Discussion	MLST Article
3.	The right of the transferee to collect under paragraphs 1 and 2 is subject to Articles [rights and obligations of debtors].		Article 83(3)
	B. Security transfers	See the comment above in relation to the heading to Part A. The Working Group may also wish to consider whether this part of the Chapter should include provisions equivalent to Articles 74-76 of the MLST.	
	Article (2). Collection of payment under a security transfer		Article 82
1.	After default, the transferee under a security transfer of a receivable is entitled to collect the receivable at any time after payment becomes due.	A number of suggested changes from the text of the MLST are designed to align the language more closely with proposed Article (1)(1). The language (and other provisions in this Chapter) may need to be reconsidered once the Working Group has decided on the extent to which the Model Law should apply to bank accounts (whether as 'receivables', or as proceeds).	Article 82(1)
2.	The transferee may exercise the right to collect under paragraph 1 before default if the transferor consents.		Article 82(2)
3.	The transferor exercising the right to collect under paragraph 1 or 2 is also entitled to enforce any personal or property right that secures or supports payment of the receivable.		Article 82(3)
4.	If a transfer of a right to payment of funds credited to a bank account has been made effective against third parties by registration of a notice, the transferee is entitled to collect or otherwise enforce its interest in the bank account only pursuant to an order of a court, unless the deposit-taking institution agrees otherwise.]	Similar to the comment in relation to paragraph 1, this will need to be reconsidered once the Working Group has decided whether (and if so, how) the Model Law is to apply in relation to bank accounts.	Article 82(4)
[4/5].	The right of the transferee to collect under paragraphs 1 to [3/4] is subject to Articles [rights and obligations of debtors].		Article 82(5)

Art.	Suggested text	Discussion	MLST Article
	Article (3). Right of the transferee to [dispose of/sell] a receivable	<p>The Working Group may wish to consider whether this Article needs to refer to 'sale or other disposal', or whether it can be limited to 'sales' only.</p> <p>The Working Group may also wish to consider whether this Chapter needs to retain the references to judicial enforcement.</p>	Article 78
1.	After default, the transferee under a security transfer is entitled to sell [or otherwise dispose of] the receivable either by applying or without applying to [a court or other authority to be specified by the enacting State].		Article 78(1)
2.	If the transferee decides to exercise the right provided in paragraph 1 by applying to [a court or other authority to be specified by the enacting State], the method, manner, time, place and other aspects of the sale [or other disposition] are determined by [the rules to be specified by the enacting State].		Article 78(2)
3.	If the transferee decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], the transferee may select the method, manner, time, place and other aspects of the sale [or other disposition], including whether to sell [or otherwise dispose of] receivables individually, in groups or altogether.		Article 78(3)
4.	If the transferee decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], the transferee must give notice of its intention to:		Article 78(4)
(a)	The transferor [and any person who owes the [secured obligation/obligation that is secured by the security transfer];		Article 78(4)(a)
(b)	Any person with a right in the receivable that informs the transferee of that right in writing at least [a short period of time to be specified by the enacting State] before the notice is sent to the transferor; and		Article 78(4)(b)

Art.	Suggested text	Discussion	MLST Article
(c)	Any other transferee that registered a notice with respect to a transfer of the receivable at least [a short period of time to be specified by the enacting State] before the notice is sent to the transferor.		Article 78(4)(c)
			Article 78(4)(d)
5.	The notice referred to in paragraph 4 must be given at least [a short period of time to be specified by the enacting State] before the sale [or other disposition] takes place and must contain:		Article 78(5)
(a)	A description of the receivables;		Article 78(5)(a)
(b)	A statement of the amount required at the time the notice is given to satisfy the [secured obligation/obligation secured by the security transfer], including interest and the reasonable cost of enforcement;		Article 78(5)(b)
(c)	A statement that the transferor or any other person with a right in the receivable is entitled to terminate the enforcement process as provided in Article [75]; and	See the question put to the Working Group in relation to the heading to this Part B.	Article 78(5)(c)
(d)	A statement of the date after which the receivable will be sold [or otherwise disposed of] or, in the case of a public [sale/disposition], the time, place and manner of the intended [sale/disposition].		Article 78(5)(d)
6.	The notice referred to in paragraph 4 must be in a language that is reasonably expected to inform the recipient about its content.		Article 78(6)
7.	It is sufficient if the notice to the transferor referred to in paragraph 4 is in the language of the transfer agreement.		Article 78(7)
8.	The notice referred to in paragraph 4 need not be given if the receivable is of a kind sold on a recognized market.		Article 78(8)

Art.	Suggested text	Discussion	MLST Article
	Article (4). Distribution of the proceeds of a [sale/disposition] of a receivable and transferor’s liability for any deficiency		Article 79
1.	If the transferee decides to exercise the right provided in Article [(3)] by applying to [a court or other authority to be specified by the enacting State], the distribution of the proceeds of sale [or other disposition] of a receivable is determined by [the provisions to be specified by the enacting State], but in accordance with the provisions of this Law on priority.		Article 79(1)
2.	If the transferee decides to exercise the right provided in Article [(3)] without applying to [a court or other authority to be specified by the enacting State]:		Article 79(2)
(a)	[Subject to Article [preferential claims],] the enforcing transferee must apply the proceeds of its enforcement to the [secured obligation/obligation secured by the transfer] after deducting the reasonable cost of enforcement;		Article 79(2)(a)
(b)	Except as provided in paragraph 2(c), the enforcing transferee must pay any surplus remaining to any subordinate competing claimant that, prior to any distribution of the surplus, notified the enforcing transferee of its claim, to the extent of the amount of that claim, and remit any balance remaining to the transferor; and		Article 79(2)(b)
(c)	Whether or not there is any dispute as to the entitlement or priority of any competing claimant under this Law, the enforcing transferee may pay the surplus to [a competent judicial or other authority or to a public deposit fund to be specified by the enacting State] for distribution in accordance with the provisions of this Law on priority.		Article 79(2)(c)
3.	The transferor remains liable for any amount owing after application of the net proceeds of enforcement to the [secured obligation/obligation secured by the transfer].		Article 79(3)

Art.	Suggested text	Discussion	MLST Article
	Article (5). Post-default rights		Article 72
1.	After default, the transferor and the transferee under a security transfer are entitled to exercise:	The Working Group may wish to consider whether this Article needs to refer to the transferor.	Article 72(1)
(a)	Any right under [the provisions of] this chapter; and	Query whether the words in brackets are needed.	Article 72(1)(a)
(b)	Any other right provided in the transfer agreement or any other law, except to the extent it is inconsistent with the provisions of this Law.	The Working Group may wish to consider whether this provision has any practical application in the context of receivables, or whether it can be deleted.	Article 72(1)(b)
2.	The exercise of one post-default right does not prevent the exercise of another post-default right, except to the extent that the exercise of one right makes the exercise of another right impossible.		Article 72(2)
3.	Before default, the transferor under a security transfer may not waive unilaterally or vary by agreement any of its rights under the provisions of this chapter.		Article 72(3)

MODEL LAW ON FACTORING**DRAFTING SUGGESTIONS FOR CHAPTER VIII – CONFLICT OF LAWS**

Art.	Suggested text	Discussion	MLST Article	RC Article
	Definition of “priority”			
	“priority” means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination of [the nature of the right,] whether the right arises under an outright transfer or is a security right, and whether any requirements necessary to render the right effective against a competing claimant ²⁸ have been satisfied.	<p>The proposed text follows the formulation in the RC. The Working Group may wish to consider, however, whether the definition should be limited to the first one and a half lines, and moved to the definitions Article in Chapter I (the approach in the MLST). The balance of the text, if desired, could then be included at the start of Chapter VIII as an interpretive rule for that Chapter, or built into the text of the Articles in Chapter VIII that deal with priority questions.</p> <p>Whichever approach is adopted, the text highlighted in green will need to be aligned with the terminology in the definition of ‘transfer’, when that definition has been settled.</p> <p>If the current formulation is approved by the Working Group, the Working Group may wish to discuss whether the bracketed text is necessary.</p>	Article 2(aa)	Article 5(g)
	Article (1).²⁹ Mutual rights and obligations of the parties			
	<ol style="list-style-type: none"> 1. The law applicable to the mutual rights and obligations of the transferor and the transferee arising from their transfer agreement is the law chosen by them and, in the absence of a choice of law, the law governing the transfer agreement. 2. The law applicable to: 	As suggested in the Issues Paper, this drafting merges MLST Articles 84 and 96. The order of the information in para 2 has been reworked a bit as against MLST Article 96, to make it more consistent with para 1.	Article 84 Article 96	Article 28. Article 29

²⁸ To be defined.

²⁹ Temporary numbering system used.

Art.	Suggested text	Discussion	MLST Article	RC Article
	<p>(a) The mutual rights and obligations of the debtor and the transferee;</p> <p>(b) The conditions under which the transfer may be invoked against the debtor, including whether an agreement limiting the transferor's right to transfer the receivable may be asserted by the debtor; and</p> <p>(c) Whether the obligations of the debtor have been discharged, is the law governing the rights and obligations between the debtor and the transferor.</p>			
	<p>Article (2). Effectiveness and priority of transfers</p>			
	<p>Except as provided in Articles [(3) and [MLST 97/98?]], the law applicable to the effectiveness and priority of a transfer of a receivable is the law of the State in which the transferor is located.</p>	<p>We may not need an equivalent of MLST Articles 97 and 98. See below.</p> <p>The term 'effectiveness' is intended to encompass effectiveness both as between transferor and transferee, and as against third parties.</p>	<p>Article 86</p>	<p>Article 30.</p>
	<p>Article (3). Transfers of receivables relating to immovable property</p>			
	<p>Notwithstanding Article [(2)], in the case of a transfer of a receivable that either arises from the sale or lease of immovable</p>	<p>This provision will not be needed if the concept of 'receivable' is defined in a way that does not include the types of receivables referred to in the provision.</p>	<p>Article 87</p>	

Art.	Suggested text	Discussion	MLST Article	RC Article
	property or is secured by immovable property, the law applicable to the priority of the transfer of the receivable as against the right of a competing claimant that is registrable in the immovable property registry in which rights in the relevant immovable may be registered is the law of the State under whose authority the immovable property registry is maintained.			
	Article (4). Enforcement of transfers			
	The law applicable to issues relating to the enforcement of a transfer of a receivable is the law applicable to the priority of the transfer[, except as provided in Article [MLST 97]].	<p>Question for the Working Group: should this provision only apply to security rights?</p> <p>As noted later in this table, it has not yet been decided whether to include an equivalent of MLST Article 97 in the Model Law. Even if we do, though, it is not clear why it should be described as an exception to this Article. (The same question applies for MLST Article 88 as well.)</p>	Article 88.	
	Article (5). Proceeds			
	1. The law applicable to the effectiveness as between the transferor and the transferee of a transfer of proceeds is the law applicable to the effectiveness as between the transferor and the transferee of the transfer of the		Article 89(1)	

Art.	Suggested text	Discussion	MLST Article	RC Article
	receivable from which the proceeds arose.			
	2. The law applicable to the third-party effectiveness and priority of a transfer of proceeds is the law applicable to the third-party effectiveness and priority of a transfer of a receivable of the same kind as the proceeds.	This drafting only works to the extent that the proceeds are themselves receivables. It will need to be reconsidered if a broader definition of 'proceeds' is adopted.	Article 89(2)	
	Article (6). Meaning of "location" of the transferor			
	For the purposes of [the provisions of] this chapter, the transferor is located: <ul style="list-style-type: none"> (a) In the State in which it has its place of business; (b) If the transferor has a place of business in more than one State, in the State in which the central administration of the transferor is exercised; and (c) If the transferor does not have a place of business, in the State in which the transferor has his or her habitual residence. 	The bracketed words appear in MLST Article 90. The Working Group may wish to discuss whether they are needed or whether, in the interests of brevity, they could be deleted. The same point arises in Articles (7), (8), (9) and (10).	Article 90	
	Article (7). Relevant time for determining location			
	1. Except as provided in paragraph 2, references to the location of the transferor in the provisions of this chapter refer: <ul style="list-style-type: none"> (a) For issues relating to the effectiveness of the transfer as between 		Article 91	

Art.	Suggested text	Discussion	MLST Article	RC Article
	<p>the transferor and the transferee, to the location of the transferor at the time of the putative creation of the transfer; and</p> <p>(b) For third-party effectiveness and priority issues, to the location of the transferor at the time the issue arises.</p> <p>2. If the right of a transferee in a receivable is made effective against the transferor and third parties and the rights of all competing claimants are established before a change in the location of the transferor, references in the provisions of this chapter to the location of the transferor are references, with respect to third-party effectiveness and priority issues, to the location prior to the change.</p>			
	<p>Article (8). Exclusion of <i>renvoi</i></p>			
	<p>A reference in the provisions of this chapter to “the law” of a State as the law applicable to an issue refers to the law in force in that State other than its rules of private international law.</p>		<p>Article 92</p>	
	<p>Article (9). Overriding mandatory rules and public policy (<i>ordre public</i>)</p>			
	<p>1. The provisions of this chapter do not prevent a court from applying overriding mandatory provisions of</p>		<p>Article 93(1) Article 93(6)</p>	

Art.	Suggested text	Discussion	MLST Article	RC Article
	<p>the law of the forum that apply irrespective of the law applicable under the provisions of this chapter.</p> <p>2. This Article does not permit a court to displace the provisions of this chapter dealing with the law applicable to the third-party effectiveness and priority of a transfer.</p>			
	<p>Article (10). Commencement of insolvency proceedings does not affect the law applicable to a transfer</p>	<p>The corresponding heading in the MLST is a bit confusing, because it suggests that insolvency proceedings can have an impact (i.e. the opposite of what the Article actually says). It has been reworked to remove the confusion.</p>		
	<p>The commencement of insolvency proceedings in respect of the transferor does not displace the law applicable to a transfer under the provisions of this chapter.</p>	<p>The Issues Paper suggested that this could be merged with the previous Article. The two Articles are a bit different, however - the previous Article deals with what courts can or cannot decide to do, whereas this Article is a straight black-letter rule.</p> <p>The two provisions have been kept separate for the time being, so that the Working Group can consider this matter further.</p>	Article 94	
	<p>Article (11). Multi-unit States</p>			
	<p>[If the law applicable to an issue is the law of a State that comprises one or more territorial units each of which has its own rules of law in respect of that issue:</p> <p>(a) Any reference in the provisions of this chapter to the law of a State means the law in force in the relevant territorial unit; and</p> <p>(b) The internal conflict-of-laws rules of that State, or in the absence of such rules, of that territorial unit determine the territorial unit whose substantive law is to apply.]</p>	<p>Unlike the other articles in the draft MLF, this article is both optional (applicable only to certain States) and could not be enacted by those States as presently drafted. The Working Group may wish to discuss how this should be reflected in the MLF (possibly as a bracketed provision).</p>	Article 95	

Art.	Suggested text	Discussion	MLST Article	RC Article
	[Transfers of rights to payment of funds credited to a bank account]	<p>The Working Group has not yet decided whether bank accounts should be within the definition of 'receivable' for the purposes of the Model Law. The preliminary drafting of chapter I suggests, however, that they should not be included. This is a placeholder to ensure that we include an equivalent of MLST 97 in the drafting, if a decision is made to the contrary.</p> <p>A separate issue is which conflict of laws rule (Article 89 or Article 97 of the MLST) would apply to money in a bank account that is proceeds rather than the original collateral. The Working Group may wish to give this issue further consideration.</p>	Article 97	
	[Third-party effectiveness of a transfer by registration]	<p>MLST 98 provides that the applicable law for achieving third-party effectiveness of security rights over certain types of assets by registration is to be the law of the location of the grantor, if that law recognises registration as a method of achieving third-party effectiveness of security rights. Those asset types include bank accounts.</p> <p>Bank accounts could also be subject to the Model Law, either (potentially) as a type of receivable, or as proceeds. Despite this, an equivalent provision may not be needed in the Model Law, because the Model Law already uses the location of the transferor as the relevant nexus. (This may need to be reconsidered, however, if the Model Law includes an equivalent of MLST 97 – see the previous item).</p>	Article 98	