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Item No. 5 on the agenda: Ongoing legislative activities

(d) 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 2021 and to consider extending the project for an additional year to complete a Guide to Enactment of the Model Law</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 C.D. (100) B.24

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 101st session of the Governing Council in September 2021.

II. BACKGROUND

2. Upon the Secretariat's proposal presented at its 99th session in April/May 2020, the Governing Council unanimously agreed to recommend that the General Assembly include the drafting, jointly with the United Nations Commission on International Trade Law (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. 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 warehouse receipts in both paper and electronic form, and offer guidance to legislators seeking to implement an enabling legal framework for electronic warehouse receipts.

III. REVISED TIMELINE FOR THE PROJECT

4. 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.

5. However, important structural differences concerning the jurisdictions' approaches to various aspects of warehouse receipts have crystallised during the Working Group's discussions. Accordingly, at the 100th session of the Governing Council held on 22-24 September 2021, it was recognised that notwithstanding the intense working schedule of the Working Group, additional time would be needed to ensure its completion, considering the additional theoretical complexity of the project. Therefore, upon the Secretariat's proposal, the Council authorised the extension of the project for one calendar year, with the presentation of the first complete draft at its 102nd session, in May/June 2023 ([C.D. \(100\) B.24](#), para. 101).

6. Accordingly, the revised calendar for the completion of the draft Model Law provides for two additional Working Group sessions, respectively in the last quarter of 2022 and the first quarter of 2023. Consultations and finalisation of the draft Model Law are envisaged for the first half of 2023, and the adoption by the Governing Council of the complete draft to be sent to UNCITRAL at its 102nd session in May/June 2023.

7. Moreover, there is agreement between the Working Group members on the need to develop a Guide to Enactment to support enacting States with the implementation of the Model Law. Such a Guide should explain the background and purpose of the single Model Law provisions and provide guidance for the drafting of the subsidiary legislation that will be required to implement the law, in particular with regard to electronic warehouse receipts. The Working Group has considered this possibility since the beginning of the project, and accordingly the Secretariat has been documenting all issues that should ultimately be included in a Guide to Enactment as they arose during the Working Group's deliberations.

8. In terms of the work plan, should the Governing Council agree to the drafting of such a Guide to Enactment for the Model Law, the Working Group would continue working on the preparation of the Guide immediately following the submission of the Model Law text to the Governing Council at its 102nd session in May/June 2023. Consequently, the work on the Guide to Enactment would be carried out in parallel to the consideration of the draft Model Law text within UNCITRAL, and the Guide would be presented to the Governing Council at its 103rd session in May/June 2024.

IV. MEETINGS OF THE WORKING GROUP AND INTERSESSIONAL WORK

9. As planned, the Working Group held four sessions during the 2020-2022 period. The first session of the Working Group took place on 2-4 December 2020 via videoconference. The report of the Working Group's first session is contained in [Study LXXXIII – W.G.1 – Doc. 5](#). Following that first session, the Secretariat set up a Drafting Committee which started preparing drafts intersessionally. The second session of the Working Group was held remotely on 10-12 March 2021, and the report

of the second session is contained in [Study LXXXIII – W.G.2 – Doc. 4](#). The third session of the Working Group, held on 1-3 September 2021 in hybrid format, focussed on the draft chapters for the Model Law that had been prepared and revised by the Drafting Committee following the second Working Group session. The report of this session is contained in [Study LXXXIII – W.G.3 – Doc. 4](#).

10. Based on the discussions of that Working Group session, the Drafting Committee revised the suggested chapters and developed draft provisions on electronic warehouse receipts and security rights in warehouse receipts. On 26 January 2022, the Secretariat organised a Special Workshop on Electronic Warehouse Receipts which took place in remote format with participation of a limited number of experts. The aim of the workshop was to consider and discuss options and possible limitations in addressing technology-related aspects in the Model Law. More precisely, it aimed to identify what provisions the Model Law could constitute an enabling legal framework for electronic warehouse receipts and ensure that such provisions reflect current practices, align with approaches adopted in relevant existing and forthcoming international legal instruments, and, at the same time, foster future developments in terms of practice, business models, or technology. The participants also identified a range of issues that should be elaborated in a Guide to Enactment or other accompanying text, rather than in the Model Law text itself. The discussion paper prepared for this Workshop and the summary report are contained in [Study LXXXIII – W.G.4 – Doc. 4](#).

11. The fourth session of the Working Group took place in hybrid format on 28 February-2 March 2022. The Working Group considered the draft chapters for the future Model Law that had been revised by the Drafting Committee based on the previous Working Group meeting, namely Chapter I “Scope and general provisions”, which included definitions of key concepts; Chapter II “Issue of a warehouse receipt”, which also contained 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”. Furthermore, the Group considered drafting options on electronic warehouse receipts for the Model Law which had been prepared based on the abovementioned Special Workshop on Electronic Warehouse Receipts to inform the Group’s discussion on how electronic warehouse receipts ought to be incorporated in the current text. More precisely, the purpose of the discussion at this session was to identify which provisions needed to be added or adapted to incorporate EWRs in the draft based on medium neutrality as the agreed conceptual approach, and signal their equal importance to paper-based receipts at the very least. In addition, the Working Group considered to what extent the Model Law should cover security rights in warehouse receipts. The discussion was guided by a background paper which had been shared with the participants in advance, setting out drafting options on security rights in warehouse receipts. The report of the fourth session is contained in [Study LXXXIII – W.G.4 – Doc. 6](#).

12. This Working Group session was followed by the first in-person meeting of the Drafting Committee on 3-4 March 2022. During the meeting, the Committee revised the draft Model Law chapters according to the decisions taken by the Working Group. The Committee focussed on revising the draft provisions to ensure that they applied to both paper-based and electronic warehouse receipts equally – in line with technology-neutrality as the conceptual approach for the Model Law agreed upon by the Working Group. New provisions specifically on electronic receipts were added where paper-based and electronic receipts could not be addressed in joint provisions, and where electronic receipts required additional provisions to provide an enabling legal framework for their issuance and transfer. Subsequently, the Committee started preparing drafting suggestions for the remaining three chapters required to complete the Model Law, namely Chapter IV “Rights and obligations of warehouse operators”, which should be limited to the extent required by the instrument itself; Chapter V “Conflict of laws”; and Chapter VI “Implementation of the law”, including transitional rules. The fifth session of the Working Group on a Model Law on Warehouse Receipts is envisaged for the last quarter of 2022.

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

V. ACTION TO BE TAKEN

14. *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 invited to consider extending the project for an additional year to complete a Guide to Enactment of the Model Law on Warehouse Receipts.*