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Warehouse Receipts**

Fourth session (hybrid)
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SUMMARY REPORT

OF THE FOURTH SESSION
(28 February - 2 March 2022)

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1. The fourth session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (hereafter the “Working Group”) took place in a hybrid format between 28 February and 2 March 2022. The Working Group was attended by 26 participants, comprised of Working Group members, observers, including representatives of international and regional organisations as well as the private and public sector, and members of the UNIDROIT Secretariat (List of participants available in Annex I).

Item 1: Opening of the session by the Chair

2. *The Chair* opened the session and welcomed the participants to the fourth meeting of the Working Group. *The Secretary-General* thanked all participants for their valuable contributions to the project and highlighted the progress achieved to date.

Item 2: Adoption of the agenda and organisation of the session

3. *The Chair* introduced the annotated draft agenda and the organisation of the session. *The Working Group* adopted the draft agenda ([UNIDROIT 2022 – Study LXXXIII – W.G.4 – Doc. 1](#), available in Annex II) and agreed with the organisation of the session as proposed.

Item 3: Adoption of the Summary Report of the Third Session (Study LXXXIII – W.G. 3 – Doc. 4)

4. *The Chair* noted that the Summary Report of the Third Session had been shared by the Secretariat with all participants. *The Working Group* adopted the Summary Report ([UNIDROIT 2022 – Study LXXXIII – W.G. 3 – Doc. 4](#)).

Item 4: Consideration of substantive matters

5. *The Chair* drew the Working Group’s attention to Item 4 on the agenda, which contained the consideration of substantive matters identified in the Issues Paper ([UNIDROIT 2022 – Study LXXXIII – W.G.4 – Doc. 2](#)).

1. Preliminary matters

6. *The Chair* referenced Section I.D of the Issues Paper, which set out the methodology and timeline for the project, and invited the Secretariat to report on the proposal to extend the project duration.

7. *The Secretariat* informed the Working Group that, as anticipated during its third session, a proposal to grant the extension of the project by one calendar year for the Working Group to finalise the draft Model Law text had been submitted to the UNIDROIT Governing Council at its 100th session in September 2021, and it had been approved by the latter. Accordingly, the revised calendar for the completion of the draft Model Law would provide for two additional Working Group sessions, respectively in the second half of 2022 and early 2023. Consultations and finalisation of the draft Model Law would be 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.

2. Content of the Model Law

8. *The Chair* introduced Section III of the Issues Paper concerning the content of the Model Law on Warehouse Receipts (MLWR). She highlighted that the following sections were to be considered in conjunction with Doc. 3, which contained the preliminary draft provisions for the Model Law that had been prepared by the Drafting Committee ([UNIDROIT 2022 – Study LXXXIII – W.G.4 – Doc. 3](#)).

(a) Scope and general provisions

9. *The Chair* introduced the drafting suggestions for Chapter I, “Scope and general provisions”, set out in Doc. 3, which had been revised based on the Working Group’s discussion at its third session. She invited Mr Whittaker, as the member of the Drafting Committee who had been in charge of the drafting of that Chapter, to present the revised provisions.

Scope of application

10. *Mr Whittaker* drew the Working Group’s attention to draft Article 1, “Scope of application”.

11. First, the participants considered the two options suggested for Article 1, paragraph 1.

12. The large majority of the Working Group supported option 1 for paragraph 1: “This Law applies to warehouse receipts.” Several participants argued in support of option 1 and against option 2 as the latter might be unclear regarding the scope of application and entail the risk of not covering all aspects to be governed by the Model Law. One participant cautioned that it might be premature to decide on Article 1 given that the Group had not yet decided what provisions on rights and obligations in relation to warehouse receipts should be included. *The Working Group endorsed option 1 for Article 1, paragraph 1 as suggested.*

13. Next, the participants considered the two options presented for the definition of a warehouse receipt in draft Article 1, paragraph 2. They unanimously supported, in principle, the suggested option 2. In their view, option 2 best aligned with the purpose of this paragraph, which was to set out the characterisation of a warehouse receipt. Option 1, conversely, presented a list of substantive requirements for a warehouse receipt, which would rather be covered as content requirements under current draft Article 8, “Content of a warehouse receipt”. *The Working Group agreed, in principle, on option 2 for paragraph 2.*

14. Continuing with draft Article 1, paragraph 2, the participants discussed each of the elements suggested under option 2.

15. It was debated whether the signature should be included in the definition of a warehouse receipt in Article 1, paragraph 2 or rather as one of the content requirements set out in Article 8. A slight majority of participants supported including the signature in Article 1, paragraph 2, reasoning that a signature would not constitute “information” to be included in a receipt according to Article 8. However, one participant remarked that, if a document was issued but not immediately signed, and then signed at a later stage, it should still be possible to consider that document a warehouse receipt. Therefore, the signature should not be part of the definition set out in Article 1, paragraph 2, but rather a validity requirement. *The Working Group agreed that the signature requirement should remain in Article 1, paragraph 2.*

16. Most participants supported that paragraph 2 should require a warehouse receipt to be describing itself as such. The reasons cited for this stance were both to provide clarity to users and avoid that a document be considered a warehouse receipt under the law – without the intention of the parties – simply because it fulfilled the description of Article 1, paragraph 2. *The Working Group agreed that the self-description should remain in paragraph 2.*

17. All participants supported deleting “in one of its warehouses whose location is specified” and “in nature and quantity” in paragraph 2(a), because neither of the elements were deemed to characterise a warehouse receipt. It was suggested to move these elements to draft Article 8, paragraph 1. Furthermore, the participants stated that “at the time and in the manner described in the document” in paragraph 2(b) should be deleted. *The Working Group agreed on the suggested amendments to paragraph 2(a) and (b).*

18. Lastly, a participant emphasised that the contribution of the MLWR to Sustainable Development Goal 2 – “End hunger, achieve food security and improved nutrition and promote sustainable agriculture” ought to be highlighted at least in the preamble or guide to enactment, in particular its potential contribution to facilitate access to markets and finance for smallholder producers in the agricultural sector.

Definitions

19. *The Chair* drew the participants’ attention to draft Article 2, “Definitions”, and invited them to consider the definition of “holder”.

20. One participant observed that the provision functioned neither for holders of electronic warehouse receipts (EWRs) nor of non-negotiable warehouse receipts, and that the following four categories of persons might qualify as a holder of a warehouse receipt: (i) in the case of a warehouse receipt that was made out to bearer, the person in possession; (ii) in the case of a warehouse receipt that was made out to order, the person in possession of the receipt if it was the most recent endorsee; (iii) in the case of a non-negotiable paper receipt, the person who was named in the receipt as the person entitled to claim delivery; and (iv) in the case of an EWR, the person in “control” of it. *The Working Group agreed that the definition of “holder” should be revised to cover these categories separately.*

21. Next, the participants considered the definition for a “negotiable warehouse receipt”. It was suggested to delete “to or” in subparagraph (a) of that definition, because a warehouse receipt issued to a named person would be a non-negotiable receipt. Furthermore, it was suggested to replace “made” by “issued” in the definition. *The Working Group agreed on both suggested changes.*

22. Participants then briefly discussed the definition for a “non-negotiable warehouse receipt”. It was suggested to replace “made” with “issued” to ensure consistency with the definition of a “negotiable warehouse receipt”, and to delete “only” at the end of the definition. *The Working Group agreed on both suggested changes.*

23. The Chair suggested that the definition of a “protected holder” in draft Article 2, paragraph 5 would be revisited once the Group had progressed with draft Chapter IV on transfers of warehouse receipts. *The Working Group agreed accordingly.*

Party autonomy

24. *The Chair* turned to draft Article 3 on party autonomy and noted that this Article had not been modified since the previous meeting. *The Working Group agreed that Article 3 be revisited once the rest of the draft Model Law text had been completed.*

International origin and general principles

25. *The Chair* introduced draft Article 4, “International origin and general principles”, and invited the participants to consider whether this provision should require regard for “the observance of good faith” in the interpretation of the law.

26. Several participants raised objections against including the reference to the observance of good faith in this provision. They argued that good faith was not a principle of statutory interpretation and would – as opposed to a standard of conduct – not be familiar to common law jurisdictions as a principle for interpretation. Such a reference could therefore cause legal uncertainty in some jurisdictions.

27. Several other participants supported including such a reference to good faith in Article 4. They referred to the prevailing tradition in UNCITRAL instruments to include this as a standard provision, which was moreover widely used in international conventions. One participant cautioned against including other general principles of statutory interpretation and noted that UNCITRAL had limited its provisions on statutory interpretation to two elements: (i) calling attention to preserving uniformity by bearing in mind the international origin of the instrument – to invite the judge to look at foreign jurisprudence – and (ii) the observance of good faith. In light of the above, this phrase would be added in the Working Group at UNCITRAL even if it were not included in the text beforehand.

28. *A slight majority of the Working Group favoured deleting the reference to observance of good faith in draft Article 4.*

29. Lastly, it was noted that the reference to “general principles” in the title of Article 4 no longer corresponded to the contents of the Article. *The Working Group agreed to delete “and general principles” from the title of draft Article 4.*

(b) Issuance of a warehouse receipt

30. *The Chair* introduced draft Chapter II on the issuance of a warehouse receipt, set out in Doc. 3. The Chapter had been revised by the Drafting Committee based on the outcome of the Working Group’s discussions during its third session. She invited Mr Riffard, as the member of the Drafting Committee who had led the drafting of the Chapter, to guide the participants through the draft provisions.

Issuance of a warehouse receipt

31. First, *Mr Riffard* drew the Working Group’s attention to draft Article 6, “Issuance of a warehouse receipt”, and presented two alternative formulations for consideration.

32. All participants favoured option 1, due to the repetitive wording of option 2. However, they supported deleting the reference to the holder as a person who could request the issuance of a warehouse receipt, noting that this would establish a vicious circle given that a “holder” was defined in Article 2 as the person in possession of a receipt.

33. One participant questioned whether the provision would apply to the case where goods were in transit, as they might not yet be considered taken into possession by the warehouse operator. Other participants replied that “taking possession” would cover both the situations of goods in transit and goods in a fixed location. It was proposed to explain that the Article covered both situations in the guide of enactment.

34. Another participant suggested that the Drafting Committee consider reformulating the provision from the passive to an active language.

35. *The Working Group agreed on option 1 for draft Article 6. Furthermore, the Working Group agreed on deleting the reference to the holder at the end of the provision and on reformulating the provision to an active language.*

Form of a warehouse receipt

36. *The Chair* drew the participants’ attention to draft Article 7, “Form of a warehouse receipt”, and asked whether it should refer to either “paper”, “physical” or “tangible” form of receipts.

37. All participants supported the “paper” form. The main argument cited against referring to physical or tangible form was that those could overlap with the electronic form, for example when

an EWR was saved on a (tangible) USB drive. One participant noted that it was increasingly common to use a polymer-type material for documents such as bank notes, which was not technically paper. Therefore, it could be helpful to explain in the guide to enactment that the term “paper” did not only cover paper in the traditional sense, but also similar kinds of materials.

38. *The Working Group agreed to retain the “paper” form in Article 7.*

Content of a warehouse receipt

39. The participants then turned to draft Article 8, “Content of a warehouse receipt”, set out in Doc. 3.

Article 8, paragraph 1 in conjunction with paragraph 5

40. First, the Group discussed draft Article 8, paragraph 1, which established mandatory terms that the warehouse operator had to include on a warehouse receipt.

41. *The Chair* introduced the three alternative wording options that had been suggested in the draft Article to establish an obligation on the warehouse operator. The majority of the participants supported either “shall” or “must”. The importance of ensuring a consistent use of those terms throughout the Model Law was highlighted. *The Working Group expressed agreement with either of the two terms above.*

42. Continuing with paragraph 1, the Working Group confirmed that this provision aimed to establish an obligation on the part of the warehouse operator. At this juncture, the participants discussed the extent to which the Model Law should address any corresponding liability of the operator. In the current draft, paragraph 5 of Article 8 aimed to provide for the consequences of a lack of or incorrect information in a warehouse receipt. While paragraph 5 provided that the lack of or incorrect information did not affect the validity of the warehouse receipt, it deferred the question of the warehouse operator’s liability to the law of the enacting State, assuming that the latter would provide for liability or damages.

43. The participants debated whether this referral in paragraph 5 was sufficient and what provisions the Model Law should provide concerning liability and damages.

44. The large majority of participants favoured including a provision that provided the basis of liability of the warehouse operator for damages that any person might suffer as a consequence of the operator’s failure to include the information required by Article 8, paragraph 1 in a receipt. This approach was supported with an argument that, depending on the enacting jurisdiction, a law that merely established an obligation without any corresponding sanction might not necessarily provide sufficient grounds for a claim for damages. Participants underlined the importance for the Model Law to not merely rely on the general law of a particular country but contain a clear and explicit provision on this issue.

45. Most participants favoured not including any further details, such as rules on the standards of liability or the scope of damages, and thus letting this be subject to the liability rules in a given jurisdiction. This interplay could be anticipated in the guide to enactment.

46. In this context, participants discussed whether the liability should constitute contractual liability or extra-contractual liability, and whether or not the Model Law should provide any indication in this regard. Most participants were against providing such an indication in the text of the Model Law.

47. Furthermore, participants discussed to whom the warehouse operator should be liable. A few participants supported limiting the provision to the holder of a warehouse receipt, while most participants favoured a broader approach covering any injured person, including third parties. They argued that a third person might suffer loss as a consequence of a mistake, for example a financier might suffer loss if the value of a collateral subsequently had to be reduced.

48. In view of all of the above, the participants reconsidered the structure of draft Article 8. Specifically, a participant suggested adding a new paragraph 2, providing that “a warehouse operator shall be liable for damages caused to the injured person by omission of any of the information required above”. In a similar vein, another participant suggested reformulating the current paragraph 5 and moving it after paragraph 1 as a new paragraph 2.

49. At this juncture, *the Chair* invited the participants to consider paragraph 5 of Article 8 and presented the two suggested options for the paragraph. The majority of participants supported, in principle, option 2 for current paragraph 5. As to the first sentence of that paragraph, they suggested replacing “insufficient” with “omission”. Furthermore, most participants favoured not referring to the “characterisation” as a warehouse receipt in this provision, because this was covered by Article 1 and any omission of terms required by Article 8, paragraph 1 could not affect the characterisation of a document as a warehouse receipt. Concerning the second sentence of paragraph 5, the majority supported replacing it with a provision establishing an autonomous base of liability, as per the previous discussion.

50. *Overall, the Working Group agreed on adding a new paragraph 2 to Article 8, comprised of two sentences: (i) the first sentence of option 2 for current paragraph 5, replacing “insufficient” by “omission” and deleting the reference to “characterisation”, and (ii) an express statement that the warehouse operator shall be liable for damages caused to the injured person by omission of any of the information required by Article 8, paragraph 1.*

Article 8, paragraph 1(a)-(d)

51. The Group then turned to the mandatory information enumerated under draft Article 8, paragraph 1.

52. A participant suggested reformulating subparagraph (a) to require “identification of the depositor”. The guide to enactment could then explain that the information required for identification might vary from one jurisdiction to another. Other participants seconded this proposal. *The Working Group agreed on the suggested reformulation.*

53. With regard to the order of subparagraphs, one participant suggested exchanging the first two. *The Working Group agreed.*

54. Concerning current subparagraph (b), a participant noted that this provision had previously also included “to the order of a named person” and that this should be reinserted, because a warehouse receipt could be issued to a named person, to the order of a named person or to bearer. *The Working Group agreed accordingly.*

55. Furthermore, concerning subparagraph (b), one participant noted that it was directly linked to current paragraph 2, which provided that a receipt that did not state that it was issued to a named person, was issued to bearer. The participant therefore suggested incorporating the latter into subparagraph (b). Another participant expressed concern with regard to such an incorporation because of the different legal functions of the two provisions – subparagraph (b) describing content requirements, whereas paragraph 2 constituted a default rule.

56. In this context, some participants argued that draft paragraph 2 was redundant because, if a warehouse receipt did not identify any person, whether as a named person or to the order of a named person, it was by default a bearer receipt.

57. Other participants supported the need for a default rule, since such information was traditionally required in a warehouse receipt. This however would entail a reformulation of the current version to cover all three types of receipts described under subparagraph (b) in the absence of any specification. A participant suggested that the Secretariat provide a comparative assessment of the default rules commonly used across jurisdictions to clarify the legislative approaches to this issue.

58. *The Working Group did not reach a decision with regard to current paragraph 2. The Group invited the Secretariat to prepare a comparative assessment providing clarity about the approaches to the default rules adopted across jurisdictions.*

Article 8, paragraph 3

59. *The Chair* introduced the list of optional information suggested under draft Article 8, paragraph 3.

60. Several participants commented that the reference in Article 8, paragraph 3(d) to the “description of the quality” of the goods was unclear, and that the formulation was not commonly used. Most domestic warehouse receipt laws required specifying the nature and quantity of the goods, or the weight of the goods. A participant noted that the Uniform Commercial Code (UCC) §7-202 referred to “the description of the goods or the packages containing them”. All participants supported a revision of draft paragraph 3(d) in line with common practice.

61. The discussion then turned to subparagraph (e), which provided that the warehouse operator might include any other terms and conditions, as long as they were not contrary to the mandatory provisions of the Act and did not affect the obligation to deliver. A few participants argued that the reference to the obligation to deliver was unnecessary, because the description required in Article 1, paragraph 2 already contained the promise to deliver. However, the majority of participants supported retaining paragraph 3(e) including that reference, because its purpose was to prevent unfair limitations of the warehouse operator’s responsibility to deliver.

62. One participant highlighted that subparagraph (e) had two dimensions, namely a determination as to what information might be included, as well as the statement that any disclaimer in the receipt would not be valid if it impaired the fundamental obligations of the warehouse operator. It was highlighted that both aspects might deserve to be dealt with separately.

63. Lastly, a participant noted that, as paragraph 3 enumerated optional terms, the word “and” at the end of subparagraph (d) should be replaced by “or”.

64. *Overall, the Working Group agreed with draft paragraph 3 as suggested, with two modifications: (i) the term “description of the quality” in Article 8, paragraph 3(d) should be revised, and (ii) the word “and” at the end of subparagraph (d) should be replaced by “or”.*

Article 8, paragraph 4

65. Next, *the Chair* drew the participants’ attention to draft Article 8, paragraph 4, noting that this provision established two default rules for paragraph 3(a) and (d), respectively.

Period of storage

66. With regard to the default rule in paragraph 4, sentence 1, which provided that in the absence of a statement of the period of storage, a warehouse receipt should be effective for an indefinite period, a participant suggested replacing the “indefinite period” by a “reasonable period”. Another participant replied that the largely prevailing view around the world was that, if no period was stated, the receipt was effective for an indefinite period. *The Working Group agreed on the text as suggested in current sentence 1.*

Quality of the goods

67. Draft paragraph 4, sentence 2 provided that, in the absence of a description of the quality of the goods, the goods were taken to be of merchantable quality. A participant highlighted that this provision applied to fungible goods that were commingled, while it did not apply to a storage of specific goods, in which case the same goods had to be returned.

68. The Group then discussed the case of goods deposited in a container or package that was to remain sealed.

69. The majority of participants took the view that the MLWR should address the case of closed containers or packages, and that the warehouse operator should, in principle, be permitted to rely on the description provided by the depositor in such a case.

70. A participant reported that it was general practice in such cases for the warehouse operator to rely upon the description provided by the depositor, but with an understanding that the self-provided description then exempted the warehouse operator from any liability as concerns the quality of the goods. Another participant confirmed that, indeed, modern warehouse receipt laws typically contained a provision stating that, if the goods were in a sealed box or container or otherwise unavailable for inspection, the warehouse operator was permitted to rely on the labels or description of the goods provided by the depositor. Thereby, any person who purchased the warehouse receipt or relied on the receipt assumed the risk that those labels were incorrectly completed. However, a warehouse operator was not released from liability if it could be shown that the operator understood that a label or description of the goods was incorrect.

71. One participant objected that the warehouse operator should not be liable for any unconformity of the goods with the description, regardless of whether they were contained in sealed boxes, unless the unconformity was obvious. Rather, the liability for a lack of conformity with the description should always lie with the depositor.

72. Another participant recommended that the Model Law provide express recognition of the possibility of a disclaimer concerning the quality of the stored goods by a warehouse operator, if the operator did not have the possibility to verify the quality of the goods, which was not very clear from the current text.

73. In addition, it was flagged that sometimes the warehouse operator was in a position to verify the quality of the goods, but instead relied on the information received from the depositor and accordingly issued a receipt for average merchantable quality. It was suggested that the MLWR also expressly recognised this scenario.

74. Finally, several participants recommended that the Drafting Committee consider the provisions concerning closed container or packages contained in Article 40 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules) and UCC §7-203.

75. *The Working Group agreed that additional provisions should be added (i) concerning the possibility of the warehouse operator to qualify the information provided in a warehouse receipt, in particular when the operator was not in a position to verify the information provided by the depositor for packaged goods, and (ii) on the liability for misdescription of the goods.*

76. The participants debated a proposal to delete both Article 8, paragraph 3(d) and the corresponding paragraph 4, sentence 2 entirely.

77. In favour of the deletion, a couple of participants argued that it could be left for the warehouse operator and the depositor to negotiate that a description of the goods should be inserted in the receipt, in accordance with the general rule of Article 8, paragraph 3(e), which allowed for other terms and conditions to be included. A participant added that some sort of description of the stored goods was already required by in Article 1, paragraph 2.

78. Conversely, the majority of participants objected to deleting paragraph 3(d), arguing that relying on the generality of subparagraph (e) would not address situations where the warehouse operator received goods in packages and a receipt was issued "Said to Contain". However, such situations had to be addressed, and accordingly other texts provided for a specific rule such as Article 40 of the Rotterdam Rules and UCC § 7-203.

79. With regard to paragraph 4, sentence 2, a participant highlighted the importance of the provision in the context of liability, and noted that its current structure spoke in favour of dealing with the absence of information as a liability issue.

80. *The Working Group agreed to reconsider whether a default provision for lack of indication of the quality of the goods in case they were fungible was needed in the MLWR.*

81. Lastly, *the Chair* asked whether the participants endorsed the reference to "merchantable quality" suggested in Article 8, paragraph 4. A participant pointed out that the notion of merchantable quality generally meant fit for intended purpose. It had been used in the English Sale of Goods Act, where however the term had been changed to "satisfactory quality". As there was a wealth of case law about the meaning of merchantable quality, it might be advisable for the MLWR to employ a different term that was not linked to the above background. Another participant noted that an often used term was "fair average quality". Participants agreed that the meaning of any term chosen could be clarified in the commentary. *The Working Group agreed that the term "merchantable quality" in Article 8, paragraph 4 should be reconsidered.*

Article 10

82. Noting that draft Article 9, "Electronic warehouse receipts", would be discussed together with Doc. 4 which contained drafting options specifically on EWRs, the Chair moved on to draft Article 10, "Loss of a warehouse receipt". She asked who should be entitled to require the warehouse operator to issue a replacement warehouse receipt under this provision.

83. One participant commented that the provision could not merely refer to the "holder", because there was no holder in the case of a lost bearer receipt. Another participant added that the term holder would not usually be used in relation to non-negotiable warehouse receipts, for which also the alternative formulation suggested in the draft, "any person to whom the warehouse receipt has been lawfully transferred", would not apply. All participants agreed that the entitled person should be the person who was entitled to claim delivery of the goods. *The Working Group deferred the corresponding reformulation of draft Article 10, paragraphs 1 and 2 to the Drafting Committee.*

(c) Transfer of warehouse receipts

84. *The Chair* introduced draft Chapter IV on the transfer of warehouse receipts, set out in Doc. 3. The Chapter had been restructured and revised by the Drafting Committee based on the outcome of the Working Group's discussions during its third session. She invited Mr Whittaker and Mr Budd as the members of the Drafting Committee who had been in charge of the drafting of that Chapter to present the revisions.

85. First, *Mr Whittaker* explained the thematic reordering of the provisions under this chapter. *The Working Group agreed with the new order of provisions in Chapter IV.*

Transfer of a negotiable warehouse receipt

86. Next, *Mr Whittaker* drew the Working Group's attention to draft Article 11, "Transfer of a negotiable warehouse receipt".

87. The participants proposed a couple of editorial changes. One participant suggested deleting "form" in Article 1, paragraph 1(b)(i) to avoid any confusion with paper versus electronic form. Another participant proposed deleting "if the person is in possession of the receipt" in paragraph 1(b), as this would be implied in the "delivery" of the receipt. *The Working Group agreed with both suggestions.*

88. One participant proposed to reformulate the Article to use "transfer by negotiation". However, the Working Group reinforced its decision against deploying the notion of negotiation for the reasons cited at previous sessions.

89. Turning to paragraph 2 of Article 11, it was discussed if the Model Law should refer to the "issuer" or "warehouse operator", who would be the same person. A participant commented that once the document was issued, the parties should be referred to by their transactional names, thus "issuer" and "holder" of the receipt. *The Working Group agreed on a differentiating approach, using the term "warehouse operator" in relation to the storage and the term "issuer" in relation to the warehouse receipt.*

90. Several participants supported reformulating the first part of paragraph 2 as follows: "If a negotiable warehouse receipt is issued to the order of a named person, ..." in order to replace "deliverable", which would align the formulation with the one deployed in other provisions. *The Working Group agreed on this reformulation.*

Transfer of a non-negotiable warehouse receipt

91. The Group moved on to consider draft Article 12 on the transfer of a non-negotiable warehouse receipt.

92. A participant observed that the draft Model Law overall did not contain a provision on the transfer of a negotiable warehouse receipt other than by way of delivery or endorsement, and thus proposed to add a provision to cover the transfer of the rights arising from a warehouse receipt by assignment. Other participants responded that such an assignment of the rights under a warehouse receipt would be governed by the general law on the assignment of rights, and that this situation would therefore not need to be regulated in the MLWR. Ultimately, the majority of participants agreed that draft Article 12 should be reformulated to cover the assignment of the rights arising from the receipt. *The Working Group agreed not to include a dedicated provision on the assignment, but to reformulate draft Article 12 as suggested.*

93. In relation to Chapter IV in general, a participant observed that the current draft did not refer to the single or dual format of warehouse receipts and queried whether not addressing the receipt format in the text of the Model Law had been a conscious decision as the issue of the format would be elaborated in the guide to enactment. *The Secretariat* noted that it would be assessed with a view to determine whether all provisions would accommodate both approaches once a more advanced and comprehensive text of the draft Model Law was presented. The guide to enactment would in any case contain guidance on this issue. A participant added that the format would only be relevant in relation to security rights, which the Model Law would not cover comprehensively, and that therefore it was not clear why the Model Law should cover dual receipts.

Rights of a transferee generally

94. The participants moved on to consider draft Article 13, "Rights of a transferee generally". *The Working Group endorsed the draft as suggested.*

Transfer of a negotiable warehouse receipt to a protected holder

95. Turning to draft Article 14, the Group discussed several alternative terms suggested in paragraph (a)(ii).

96. Most participants favoured the term "took" over "acquired" referring to the receipt, arguing that a person could also "acquire" the receipt by assignment, whereas only transfers according to Article 11 (transfers by delivery and/or endorsement) should be covered by Article 14. Furthermore, most participants favoured the term "notice" over "knowledge". *The Working Group agreed accordingly.*

97. A participant objected against the formulation "defect in the title" that it was a common law concept, and therefore stated a preference for the second alternative: "defence against the warehouse receipt or any claim to the warehouse receipt on the part of any person". Several other participants seconded this position. In this context, it was noted that the MLWR might need to clarify what "defence" meant, namely any defence of the issuer against the holder of the warehouse receipt arising out of the underlying contract. Other participants supported this proposal. *The Working Group agreed on the second alternative and possibly adding a clarification of what "defence" meant in the context of this provision.*

98. Several participants recommended deleting "for value", arguing that it was a complex common law concept. Some participants expressed the view that the clause at the end of paragraph (a), "unless it is established that the transfer is not in the ordinary course of business or financing", would be sufficient to effect the intended exclusion. Others doubted that this clause would cover all intended cases and supported adding a paragraph describing the transactions that should not be protected by the provision instead. *The Working Group agreed to delete "for value" and retain the above clause.*

Rights of a protected holder of a negotiable warehouse receipt

99. Turning to draft Article 15, *the Chair* invited the participants to consider whether paragraph 1(c) should refer not only to defences or claims by the warehouse operator but also those by "third parties", which all participants responded to in the affirmative. *The Working Group agreed accordingly.*

100. Moving on to paragraph 2, one participant queried whether the entire paragraph was redundant. Another participant flagged that the provision aimed to clarify that the circumstances it described would not affect the protected holder's rights, which in turn would provide legal certainty to parties. Other participants agreed that the provision was not redundant, and referred to its effect

on the recovery of funds based on unjust enrichment actions. *The Working Group decided, in principle, to retain paragraph 2.*

101. A participant noted that the formulation of paragraph 2 was vague and too general and, moreover, that the notion “defeated” originated from the UCC and might not be understandable in each jurisdiction. Therefore, he proposed to draft the chapeau of paragraph 2 along the following lines, borrowing from the Bills and Notes Convention: “The rights of a protected holder are not subject to any claim by any person, except a valid claim arising from the underlying transaction between the holder and the person by whom the claim is raised, even if: ...”. This clause was needed to clarify that claims of parties to an underlying transaction would be preserved.

102. A participant commented that the provision should clarify that the protected holder was not aware of any of these circumstances.

103. Another participant suggested revising paragraph 2(c) to add a caveat at the end of subparagraph (c): “unless that person acquires the goods in the ordinary course of business”.

104. *The Working Group invited the Drafting Committee to revisit draft Article 15, paragraph 2.*

Rights of a transferee other than a protected holder of a negotiable warehouse receipt

105. The participants then considered draft Article 18.

106. Highlighting that paragraph 1, sentence 2 imposed an obligation on the issuer to acknowledge a transfer upon notification, a participant questioned whether such an obligation was justified. He suggested that the default rule in that sentence should be reversed so that the issuer of a non-negotiable warehouse receipt was not obliged to acknowledge transfer, unless agreed otherwise.

107. Other participants agreed with this suggestion, noting that the rule for a non-negotiable warehouse receipt should have been that it is not transferable without the consent of the issuer. Therefore, a reformulation of sentence 2 was proposed to provide that the issuer was not obliged to acknowledge a transfer.

108. Another participant proposed to differentiate between non-negotiable warehouse receipts on the one hand, and negotiable warehouse receipts held by a non-protected holder on the other, and to address them separately. He noted that draft Article 18 dealt with two very different situations, and queried how the provision related to current Article 14(a)(ii), which set out subjective circumstances that the issuer would have to ascertain. Several participants supported that the clause in sentence 2 should only apply to non-negotiable receipts.

109. *The Working Group agreed that the Article should only apply to non-negotiable warehouse receipts and invited the Drafting Committee to revisit draft Article 18 in light of the above discussion.*

Warranties on transfer of a warehouse receipt

110. Next, the Group considered draft Article 19.

111. A participant observed that draft Article 19 was phrased to apply to all warehouse receipts, but should only be limited to negotiable warehouse receipts instead. Warranties would only make sense for negotiable receipts, and if a person bought a non-negotiable warehouse receipt, it would not rely on the receipt itself, but on the acquired rights that the person perfected by notification. Other participants agreed that this protection was not necessary for non-negotiable receipts. *The*

Working Group agreed that the Article should only apply to negotiable warehouse receipts and not to non-negotiable receipts.

112. Regarding Article 19, paragraph 1(b), several participants stated that the meaning of “worth” was unclear in this context, and suggested the deletion of that term. A participant noted that the value referred to in draft Article 19 was not the same as in the context of negotiable instruments. It would be difficult to determine the value in that particular case because the value was not necessarily stated in the receipt, which might be sold for a different value along the chain. Another participant commented that the transferor did not warrant a particular value of the goods, but rather that it did not know of any fact that would impair the value of the goods covered.

113. Several participants questioned the difference between the validity of a warehouse receipt referred to under paragraph 1(b) and the genuineness of a warehouse receipt referred to under paragraph 1(a). A merge of both subparagraphs was proposed to overcome the apparent overlap. A participant noted that the distinction between the terms genuine and validity seemed to have been adopted from the English law of bills of lading, and recommended against replicating these notions in the context of warehouse receipts.

114. *The Working Group asked the Drafting Committee to revisit draft Article 19 in accordance with the discussions above.*

Transferor not a guarantor

115. *The Working Group asked the Drafting Committee to revisit draft Article 20 in conjunction with Article 19.*

Other provisions

116. The participants decided to discuss the draft provisions of Chapter IV that related to security rights, namely Articles 16 and 17, at a later stage together with the Note on Security Rights in Warehouse Receipts contained in Doc. 5.

(d) Electronic warehouse receipts

117. *The Chair* invited the Secretariat to introduce the discussion on electronic warehouse receipts.

118. *The Secretariat* summarised the intersessional work on electronic warehouse receipts that had been conducted since the third Working Group meeting. It recalled that the Drafting Committee had intentionally prepared the present Model Law text presuming paper receipts as a starting point, given that the underlying principles for both paper-based receipts and EWRs were largely identical. At this session, the Working Group was invited to consider the suggested drafting options on EWRs for the Model Law set out in Doc. 4, which had been prepared to inform the Group’s discussion on how EWRs 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.

119. *The Chair* then invited Ms Rodriguez De Las Heras Ballell to present the Drafting Options on Electronic Warehouse Receipts for the MLWR and Guide to Enactment, set out in Doc. 4 ([UNIDROIT 2022 – Study LXXXIII – W.G.4 – Doc. 4](#)).

Article 1

120. *Ms Rodriguez De Las Heras Ballell* drew the attention of the Working Group to Doc. 4, Section II, paragraph 11, and presented two options for draft Article 1 of the MLWR to refer explicitly to EWRs in order to signal their importance.

121. Firstly, the majority of participants supported referring to EWRs in Article 1 to signal the equal importance of both paper-based and electronic receipts.

122. Secondly, the majority of participants supported incorporating current Article 7, "Form of a warehouse receipt", either in Article 1, paragraph 2, or as a new paragraph 3. An addition to Article 1, paragraph 2 that "a warehouse receipt is a document or an electronic record", was suggested, and to include a sufficiently broad definition of an electronic record in Article 2 to encompass the various existing or future technologies used for EWRs. Most participants seconded this suggestion.

123. Lastly, a participant underlined the practical importance of EWRs, reporting that most jurisdictions considered EWRs as the way forward. He supported amending the draft Model Law to reflect that reality.

124. *The Working Group agreed to refer to EWRs already in draft Article 1 by incorporating current Article 7 in Article 1, paragraph 2 ("a warehouse receipt is a document or an electronic record").*

Article 2

125. The participants went on to consider alternative options for the definition of an EWR suggested in paragraph 11(c) of Doc. 4 to be included in draft Article 2 of the MLWR. They discussed the possibility of including the definition of an "EWR" referring to an electronic record, in addition to the definition of an "electronic record".

126. *The Working Group agreed on adding the definition of an "electronic record" in draft Article 2.*

Article 9

127. The Group then turned to Doc. 4, paragraph 14 related to current paragraph 2 of Article 9, "Electronic warehouse receipts", and discussed whether the current provision accommodated the possibility to update information in an EWR dynamically, without any human intervention.

128. There was consensus among the participants that the current provision accommodated this possibility.

129. A participant recommended retaining the formulation of draft Article 9, paragraph 2 in its current version, to include a more detailed explanation of the various issues related to dynamic updating in the guide to enactment. Retaining the formulation was advisable because it literally reflected Article 10 of the UNCITRAL Model Law on Electronic Transferable Records (MLETR), which both the G7 and the ICC had recently recommended to countries to implement for the promotion of digital trade. The same formulation had subsequently been adopted in the work on the UNCITRAL provisions concerning identity management systems and, in that context, had been considered sufficiently broad and flexible to accommodate not only an automated but also a fully autonomous system through the employment of artificial intelligence, provided that the system rules authorised the change in advance.

130. One participant proposed two minor modifications to the wording to tailor the provision to EWRs: changing “electronic transferable record” to “electronic record” and replacing “creation” with “issuance”.

131. *The Working Group agreed to retain the current Article 9, paragraph 2 and invited the Drafting Committee to consider the above two minor modifications to the wording.*

132. The participants then moved on to consider draft Article 9, paragraph 1.

133. One participant highlighted that the current formulation presumed paper-based warehouse receipts as the standard, and provided that EWRs would be equal if particular conditions were met. For this reason, he recommended reformulating paragraph 1 for the MLWR to place both forms on equal footing, rather than suggesting EWRs as a second option. A participant replied explaining that the provision dated back to the 1996 UNCITRAL Model Law on Electronic Commerce (MLEC) and that such a clarifying provision had been necessary to introduce the electronic format at the time. However, nowadays such a clarification was no longer needed and the MLWR could thus be formulated in a more positive manner.

134. The large majority of participants supported the reformulation of paragraph 1 in a more positive manner. It was suggested to reformulate the first sentence of paragraph 1 along the following lines: “The EWR has to use a reliable method to: (a.–c.)” or “A warehouse receipt can be issued as an electronic record provided that: (a.–c.)”.

135. A participant recommended that if paragraph 1 were to be reformulated accordingly to achieve a more positive recognition of EWRs, then it should be accompanied by an explanation that the Working Group took the view that the cautious formulation adopted in the 1996 MLEC was no longer necessary. Furthermore, he noted that the functional equivalence for “writing” (information in an EWR must be accessible so as to be used for subsequent reference) should either be included in paragraph 1, or in the definition of an EWR.

136. In addition, several participants suggested to incorporate a distinction between paper-based receipts and EWRs in every provision where it was needed, by adding separate articles on the transfer of paper-based receipts and EWRs for instance.

137. *The Working Group agreed on the reformulation of draft Article 9, paragraph 1 along the abovementioned lines to provide a more positive recognition of EWRs. The Group also agreed on incorporating a distinction between paper-based receipts and EWRs in every provision where needed.*

Terminology neutrality

138. The Group turned to Doc. 4, paragraph 12, and discussed whether the terminology was to be reviewed throughout the text of the Model Law in order to use a sufficiently neutral terminology to accommodate for both paper-based receipts and EWRs.

139. A participant recommended to rather formulate provisions specific to either format, in order to retain the terminology on paper-based warehouse receipts that was familiar to the industry, and add terminology specific to the electronic form. In a similar vein, a participant highlighted the importance of striking a balance between technology-neutral and technology-sensitive language.

140. In reference to draft Article 10, “Loss of a warehouse receipt”, one participant asked whether it would accommodate EWRs, and specifically whether the loss of the identifier or private key required to transfer the control of an EWR would be considered the “loss” of a warehouse receipt under that provision. The participants took the view that the MLWR could include a more specific paragraph for

the loss of control of an EWR, while what “loss” of an EWR would mean could also be explained in the guide to enactment.

141. *The Working Group invited the Drafting Committee to formulate medium-specific provisions where necessary, and otherwise use neutral terminology accommodating both paper-based receipts and EWRs.*

Guide to enactment

142. The Group turned to Doc. 4, Section III and discussed what issues should be addressed in the guide to enactment.

143. The participants flagged that the guide ought to explain, inter alia, the following issues: the different technological models deployed for EWRs; dynamic updating of information; and loss, destruction and unavailability of an EWR addressed in draft Article 10. It was also suggested that the guide ought to provide for how the concept of control applied in a token-based/registry-based/blockchain/other warehouse receipt system should the Working Group decide not to depart from the concept of control set out in Article 11 of the MLETR.

144. *The Working Group generally agreed with the issues suggested in Doc. 4, paragraph 20 for inclusion in the guide to enactment.*

145. Lastly, one participant flagged the issue of the digitisation of paper-based receipts. He recommended including a provision in the MLWR to invalidate the circulation of the paper-based warehouse receipt in the presence of a circulating digital copy, to avoid an increased risk of fraudulent transactions. He invited the Drafting Committee to consider suggesting a provision in the MLWR for cases of conversion of paper receipts into electronic records or the coexistence of both forms, to ensure that only one of them could be transferable.

146. Another participant responded that both the MLETR and the Rotterdam Rules contained a provision concerning the change of medium. However, both presumed that there was one original and the parties agreed on its conversion, while in the abovementioned scenario there seemed to be a copy circulating without the consent of the parties. He agreed that this issue ought to be considered and a provision on the replacement of the medium was needed in the MLWR, cautioning that the Group should carefully consider what the function of such a provision would be.

147. *The Working Group agreed that the MLWR should contain a provision on the replacement of the medium.*

(e) Security rights in warehouse receipts

148. *The Chair* introduced the topic with reference to Doc. 5 on security rights in warehouse receipts ([UNIDROIT 2022 – Study LXXXIII – W.G.4 – Doc. 5](#)). Initially, she asked the participants whether the MLWR should, in principle, include rules on security rights in warehouse receipts beyond those already included in the current draft Model Law text.

149. A participant recalled that one of the purposes of the MLWR was to enable financing against warehouse receipts and therefore at least the existing provisions in the current draft were needed, and possibly additional provisions.

150. Some participants suggested that the MLWR should allow warehouse receipts to be used as collateral, but that general secured transactions law would cover to what extent and under what modalities that could occur. This approach would generally correspond to that of the Rotterdam Rules and the rules on transport documents.

151. Other participants replied that there might be circumstances under which it could be necessary to consider a different approach to the use of warehouse receipts as collateral. It might be possible for an economy to develop a warehouse receipts system but without a modern secured transactions law or collateral registry in place. For such cases, it might be necessary to clarify what the security rights were in at least a few provisions of the MLWR.

152. *The Chair* invited the Working Group to consider whether any of the provisions suggested in Doc. 5 should be included in the MLWR.

153. A few participants argued in favour of including some of the main provisions of the MLST set out in Doc. 5 in the MLWR. They argued that it would not be sufficient to refer the legislator to the law on secured transactions. The MLWR could not assume that every jurisdiction had a modern secured transactions law in place, and thus should provide for minimum provisions, which would also build a link to the domestic secured transactions regime. At the same time, the MLWR would promote the MLST.

154. A slight majority of participants argued against the inclusion of any of the provisions set out in Doc. 5 in the MLWR. A participant cautioned that he was not aware of any warehouse receipts law that attempted to pre-empt personal property security interest legislation, and it would be both unnecessary and risky for the MLWR to attempt such an undertaking. Another participant remarked that if some of the rules of the MLST were reproduced in specific instruments, such as the MLWR, it could promote fragmentation. Moreover, if the MLWR were to adopt specific provisions from the MLST, the Working Group was not in the position to know what those provisions would look like at the end of the intergovernmental negotiations at UNCITRAL at that point, while any outcome that was not consistent with the MLST should be avoided. Furthermore, if the MLWR included only some of the rules on security interests, it might raise the question why other rules were not included.

155. All participants supported that the guide to enactment should highlight the importance of having a modern secured transactions regime, as reflected in the MLST, in place for amplifying and expanding finance for agriculture. Moreover, the guide should explain that the warehouse receipts law ought to be harmonised with the general secured transactions legislation.

156. Lastly, a participant recalled that both warehouse receipts law and secured transactions law, if applied to the agricultural sector, aimed to facilitate access to finance at all stages of agricultural production. However, there was a strong bias in domestic legal frameworks that favoured post-harvest financing, while especially smallholder producers faced problems at the pre-harvest stage. It would be helpful if either the Model Law or the guide to enactment could address the importance of the compatibility between both post- and pre-harvest financing instruments. It was pointed out that current Article 15, paragraph 3 of the MLWR dealt with the issue of priority between those.

157. *The Working Group agreed, in principle, that the MLWR should not include specific provisions on security rights from the MLST as set out in Doc. 5. The Working Group furthermore agreed that the guide to enactment should highlight the importance of a modern secured transactions regime and of harmonising the warehouse receipts law with secured transactions legislation.*

Item 5: Organisation of future work

158. *The Secretariat* noted that there would be two further Working Group sessions under the project and that the proposed dates for the next session, tentatively envisaged for September/October 2022, would be communicated in due course. Meanwhile, the focus would be on advancing the intersessional work on the draft Model Law and the Secretariat would contact some of the participants after the session for supporting that work.

Item 6: Any other business

159. In the absence of any other business, *the Deputy Secretary-General* and *the Chair* thanked all participants for their valuable contributions to the session and the fruitful three-day discussion, and declared the session closed.

ANNEX I**LIST OF PARTICIPANTS****EXPERTS**

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ANNEX II**ANNOTATED DRAFT AGENDA**

1. Opening of the session by the Chair
2. Adoption of the agenda and organisation of the session
3. Adoption of the Summary Report of the Third Session ([Study LXXXIII – W.G.3 – Doc. 4](#))
4. Consideration of substantive matters
 - (a) Matters identified in the Issues Paper (Study LXXXIII – W.G.4 – Doc. 2)
 - (b) Preliminary drafting suggestions for the Model Law on Warehouse Receipts (Study LXXXIII – W.G.4 – Doc. 3)
5. Organisation of future work
6. Any other business