



Model Law on Factoring Working Group

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**MODEL LAW ON FACTORING CONSULTATION -
COMMENTS SUMMARY TABLE**

(prepared by the UNIDROIT Secretariat)

Introduction

1. This document provides a summary table in relation to the comments received on the draft Model Law on Factoring during the public consultation undertaken between July and October 2022. The summary table divides the 28 submissions received into 195 individual comments and orders the submissions by chapter.

2. The summary table contains the following information:

- i. Column 1 provides the issue or article number to which the comment relates
- ii. Column 2 provides the comment number
- iii. Column 3 provides a succinct summary of the comment made
- iv. Column 4 provides the details of who submitted the comment, and a reference number for the submission, in order to allow Working Group members to find the original submission in document Study LVIII A – W.G.6 – Doc. 5
- v. Column 5 provides an initial Secretariat response to the comment submitted, to assist the Working Group in its deliberations

3. This document should be considered alongside Study LVIII A – W.G.6 – Doc. 5 (Consultation Submissions). While Working Group members are encouraged to consider all of the original submissions themselves as set out in Study LVIII A – W.G.6 – Doc. 5 and all 195 individual comments set out in this document, the Secretariat notes that it will not be possible to discuss all of the comments at the sixth Working Group session.

4. The Secretariat suggests that during discussions, the Working Group could focus its attention on comments which the Secretariat have identified may require further Working Group consideration (**bold** text in Column 5). The Secretariat has identified approximately 40 such comments.

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General Comments

Relevant issue	#	Comment/proposal	Submitted by	Secretariat response
Title	1	It was suggested to include the definition of “factoring” in the MLF. Without such a definition, except in the name of the law, it seems to be a model law on transfers of receivables. A comparison was made between the MLF and the UNIDROIT Convention on International Factoring and the Factoring Model Law by International Factors Group (integrated into FCI), as both the latter instruments include a definition of “factoring contract”. Reference was also made to the UNIDROIT Model Law on Leasing, which has clearly included the definition of “lease”.	ICC China (2) Ms Xu Jun	The Secretariat recalls that the issue of the title has been discussed in Working Group 5.
	2	It was suggested that the title of the MLF is slightly misleading, given in particular that the term ‘factoring’ is typically understood as involving sales of certain types of receivables. The MLF in fact covers not only outright transfers but also those made by way of security, extending beyond the traditional notion of factoring. It was suggested that the MLF is described in more general terms, such as a ‘Model Law on Receivables Financing’, which also better reflects common usage.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat recalls that the issue of the title has been discussed in Working Group 5.
Types of factoring	3	The MLF appears to assume that there is always a notification made to the Debtor, apparently leaving out other types of Factoring. However, this notion is not clear throughout the text. It was suggested that the MLF is more precise and to distinguish the different types of factoring (with and without	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat notes that the draft MLF does not impose, or assume, an obligation to notify the debtor. By its terms, draft MLF applies to all types of factoring and supply chain transactions.

		recourse, notified and confidential). Otherwise it will only apply to a restricted number of operations.		
Draft MLF	4	Draft MLF was reviewed, but no particular comments were deemed necessary, considering that the provisions of the proposed framework are contained in the Mexican legal system and that a Public Registry is also regulated for the purposes of the operations that are celebrated for effects of publicity and priority.	Banco Nacional de Comercio Exterior S.N.C. (13) Mr Héctor Manuel Gómez Flores	The Secretariat suggests that no action is required in response to this comment.
Registry	5	It was acknowledged that the registry can also be part of a general registry system of a state for any kind of asset registration.	FCI Legal Committee (14)	The Secretariat suggests that no action is required in response to this comment.
Transfer of receivables	6	It was suggested that some very important issues are addressed, such as, for example, the need to ensure that the receivables transferred are adequately determined in the registration notice and, at the same time, that the registration do not harm transfers without notification to the debtors. It was suggested to provide guidance (at least in the Guide for Enactment) to assure that the registration process is carried out smoothly and substantially in real time, so that it doesn't hamper the efforts of the factors to provide quick answers to the clients' needs.	Assifact (16) Mr Alessandro Carretta	The Secretariat suggests that these matters would be best dealt with in the Guide to Enactment and that it may not be necessary to amend the instrument itself.
Conceptual compatibility with the UNCITRAL Model Law on Secured Transactions	7	It was suggested that the distinction drawn by the MLF between 'outright transfers' and 'security transfers' is problematic, because it does not reflect the treatment of outright transfers under the UNCITRAL Model Law, despite the MLF being designed to be consistent with the Model Law. Under the latter, an outright transfer is treated as a security transaction.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat notes that the MLST defines "security right" to capture both security interests in receivables and outright transfers of receivables. The MLF does the same (but refers to them as "transfers" rather than "security rights", reflecting the different context and objectives of the MLF). While the

		<p>It was suggested that if the current distinction between outright and security transfers is maintained, it would be helpful to provide in the Guide to Enactment an explanation of how an outright transfer would be treated under any broader secured transactions reform based on the ST Model Law.</p>		<p>MLST’s core concept/device is a security right, the MLF’s core concept/device is a transfer which is not a right in itself, but a type of a transaction. It is suggested that a State wishing to implement the MLST later may simply define “security right” to include transfers as defined in its factoring law. The MLF approach is more closely aligned to the Receivables Convention in this aspect.</p> <p>The Secretariat suggests that these matters would be best dealt with in the Guide to Enactment and that it may not be necessary to amend the instrument itself.</p>
<p>Balancing of competing interests</p>	<p>8</p>	<p>Balancing of competing interests was questioned in relation to:</p> <p>a) The complete override of anti-assignment clauses (Chapter II, Article 8). This removes too much autonomy from the debtor. It is preferable for debtor’s ability to sue (which is maintained in other conventions and in the Secured Transactions Model Law) be retained in the MLF, with a note in the Guide to Enactment to the effect that this can be modified so as to exclude the right;</p> <p>b) The apparent lack of any property interest (equivalent in a common law regime to an equity of redemption) remaining in the transferor where the transfer is made by way of security and is a transfer of title to the receivable (and not a creation of a new right)</p>	<p>The University of Sydney Law School (18)</p> <p>Ms Sheelagh Mccracken</p>	<p>a) The Secretariat recommends that the Working Group may not need to change the drafting of this article. This matter has been previously discussed and it was determined that the MLF should provide a complete override of anti-assignment clauses.</p> <p>b) The Secretariat notes that is not a secured transactions law, and only refers to security interests to the extent necessary to ensure that the MLF functions properly. Whether a transferor of a security transfer would retain a property interest in the receivable or would have an equity of redemption (or similar) will depend on other laws of the enacting jurisdiction.</p>

	<p>c) The apparent right of the transferee to proceeds where those proceeds are constituted by credit in a bank account in circumstances where the bank otherwise might reasonably expect to have a claim to priority under a secured transactions law regime, whether by way of security interest or by way of a banker's right of combination or of a set-off;</p> <p>d) The lack of guidance as to the time at which priority is determined between competing claimants. What should be the cut-off date for registration?</p>		<p>The Secretariat suggests that these matters would be best dealt with in the Guide to Enactment and that it may not be necessary to amend the instrument itself.</p> <p>c) The Secretariat notes that the MLF doesn't contain a comprehensive set of priority rules as between all types of interests in receivables, generally only as between competing transfers. A competition between a transferee and a bank would be resolved by other laws of the enacting jurisdiction, not by the MLF. The Working Group previously discussed this situation and concluded that it is outside the scope of the MLF.</p> <p>d) The Secretariat notes that the draft MLF does not provide a time period in which a party must register a notice in the Registry, as it is assumed that a party will register as soon as possible to avoid the risk of losing priority. The Secretariat notes that under the Australian Personal Property Securities Act, there are a number of ways in which a security interest can be perfected, with differing priority consequences, and it is possible that the ranking as between two security interests could change over time. As the draft MLF only provides one method of</p>
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				perfection (registration), such issues are unlikely to arise.
Distinction between transfer agreement and transfer	9	It was suggested that the current drafting of Art. 5 risks conflating “transfer agreement” and the actual “transfer”. If the intention is that the transfer agreement and the transfer are indeed separate steps, it is suggested that a transfer should take effect in accordance with the intention of the parties. This might be determined by reference to, for example, the terms of the parties’ agreement (and perhaps additionally, drawing on language commonly found in common law domestic sale of goods legislation, their conduct or the circumstances of the case). Such a distinction between the transfer agreement and the transfer raises the further fundamental question whether it is in fact the transfer that should be in writing.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that the draft MLF intends for a transfer agreement and transfer to be separate steps as a transfer can’t occur without an agreement and may not occur simultaneously with the agreement, such as with respect to future receivables. The draft MLF does not recognise conduct of parties as sufficient to form a transfer agreement.
Additional definitions	10	It was suggested to add a definition of ‘signed’ with respect to electronic communications. The expression, in relation to a writing, appears in several places (Articles 5(1)(a) and 29(1)(3)).	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that no action is required in response to this comment as this is a matter of general e-commerce legislation.
Guidance on treating transfers of receivables in insolvency	11	It was suggested that implementing States would likely benefit from some guidance on treating transfers of receivables in insolvency. For instance, Slovak law governs the procedures for transferring receivables during the insolvency proceedings and admitting the transferee as a participant in the insolvency proceedings. The procedures differ whether the transferee is already owed receivables from the transferor in insolvency, or it is not involved in insolvency proceedings. These issues could be addressed in the Guide to Enactment.	Právnická fakulta Univerzity Mateja Bela v Banskej Bystrici (23) Mr Miloš Levrinc	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.

Draft MLF	12	UNIDROIT's initiative to develop a draft model law was assessed positively. The solution providing for the establishment of a register where transfers of receivables will be disclosed is particularly noteworthy.	Embassy of Poland in Italy (19) Ms Joanna Herczyńska	The Secretariat suggests that no action is required in response to this comment.
Draft MLF	13	No proposal was deemed necessary.	Ms Silvia Lucchetti	The Secretariat suggests that no action is required in response to this comment.
Rights to proceeds	14	It was suggested that the Draft MLF should make it clear that the transferee does not lose its rights to the proceeds of receivables once paid into a bank account upon the insolvency of the transferor. The right is deemed to become a "new" right to payment from the depository bank. This is addressed in Art.6 and Art.10, but perhaps commingled proceeds and tracing should also be addressed.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter be further considered by the Working Group. The Working Group may wish to consider whether to include an adapted version of article 10(2) of the MLST.
Priority issues	15	Another issue to be addressed is the priority issue for an assignment of receivables to prevail over the holder of a security right in the inventory sold that gave rise to such receivables, absent appropriate purchase-money steps.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat notes that this issue has been already considered by the WG, which decided that the MLF should not be designed to reach this far. It is suggested that this is a matter of general secured transactions law, which would vary on the result and the steps needed to achieve priority. The Secretariat suggests that the Guide to Enactment should prominently highlight some of the limitations of what the MLF can do, including the priorities concerning bank accounts and thus encourage States to reform their secured transactions laws.

Recourse factoring	16	The MLF only defines non-recourse factoring as factoring. The topic of recourse factoring is not mentioned anywhere.	Raiffeisen Factor Bank AG (24) Mr Béla Szegedi-Székely	The Secretariat notes that the draft MLF applies to both recourse and non-recourse factoring.
Scope	17	The MLF goes too far in its definition of receivables, for example including receivables from credit card payments. The type of receivables in Austria is generally limited to receivables from the delivery of goods and services.	Raiffeisen Factor Bank AG (24) Mr Béla Szegedi-Székely	The Secretariat suggests that no action is required in response to this comment.
Classification of the legal nature of factoring	18	The MLF classifies the legal nature of factoring not as a purchase contract but as an assignment of receivables. It was suggested that this is re-assessed, because otherwise, it would mean that some essential advantages of the purchase contract nature under Austrian law (such as the right to separate satisfaction in insolvency proceedings) would no longer apply.	Raiffeisen Factor Bank AG (24) Mr Béla Szegedi-Székely	The Secretariat suggests that no action is required in response to this comment.
Public registry	19	The introduction of a public registry in Austria would impair and slow down transferability and lead to additional costs for all stakeholders.	Raiffeisen Factor Bank AG (24) Mr Béla Szegedi-Székely	The Secretariat suggests that no action is required in response to this comment.
Legal accounting standards	20	It was suggested that the MLF includes some legal accounting standards or references to them. In the interest of international standardization, it would be useful to at least include references to IFRS articles.	Raiffeisen Factor Bank AG (24) Mr Béla Szegedi-Székely	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
WG composition	21	It was suggested to expand the expert group to include experts from the continental European legal sphere (civil law). There are possible collisions with European law directives, especially PSD2 and the Directive on the enforcement of intellectual property rights.	Raiffeisen Factor Bank AG (24) Mr Béla Szegedi-Székely	The Secretariat notes that many factoring stakeholders from Continental Europe have been involved as observers to the Working Group.

Commercial disputes	22	It was suggested that more attention should be paid on what happens when commercial disputes arise and on how to deal with reimbursement to the debtor who returns the goods.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
National Law	23	It was suggested that asterisks along the text could be used to let the States know that they need to check their National Law when it comes to the transferor agreeing public receivables (receivables owned by public entities).	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.

Chapter I - Scope and general provisions

Article number	#	Comment/proposal	Submitted by	Secretariat response
Art. 1 – Scope of application	24	It was suggested that this Article should state that the MLF applies to the transfer of receivables, whether the transfer is an outright transfer or a transfer by way of security. This would make the scope clearer and more consistent with drafting in the ST Model Law.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
	25	It was suggested to include a general statement upfront indicating that the prior law with respect to transfers applies to the extent specified in Chapter IX, thereby drawing attention at the outset to the relationship of the MLF with existing law.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat observes that typically a State would include such a statement in its final provisions. However, the Secretariat suggests that this matter be further considered by the Working Group.
Art. 1(1) – Scope of application	26	It was suggested that the MLF defines the contract giving rise to a receivable that is made between the transferor and the debtor in Art.1 to avoid redundancy throughout the Law’s provisions.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the EFL definition of contract is largely consistent with the definition of receivable in the MLF. There may be no need to further amend the MLF.
Art. 1(4) – Scope of application	27	The prohibition of ban of assignment clauses to increase the availability of credit for small and medium-sized companies was welcomed.	FCI Legal Committee (14)	The Secretariat suggests that no action is required in response to this comment.
Art. 2 - Definitions	28	It was suggested to have a general interpretation clause. Singular includes plural and vice versa, any gender includes all other genders.	FCI Legal Committee (14)	The Secretariat notes that the draft MLF does not refer to gender. However, the WG may wish to consider the matter in relation to the singular/plural clause.

Art. 2(1) - Definitions	29	It was suggested that the exclusion of receivables arising from the sale or lease of immovable properties need to be clarified as these are legitimate receivables and are transferred under a factoring agreement in many countries, such as Italy. An alternative suggested was that the Guide to Enactment could specify that the scope of application could be enlarged to these receivables where there is no conflict with the law of the jurisdiction.	Assifact (16) Mr Alessandro Carretta	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that this matter was already discussed by the Working Group and these types of receivables were excluded as they raise a potential of conflict with an interest under the land law, which the MLF is not designed to deal with. A State would not be precluded from implementing the MLF with a narrower or broader scope of application, but in the latter case it ought to be aware of potential conflicts that might need to be resolved.
Art. 2(1)(a) - Definitions	30	It was suggested to clarify if the definition of "debtor" includes a guarantor.	FCI Legal Committee (14)	The Secretariat suggests that this matter be further considered by the Working Group. However, the Secretariat notes that this matter has been previously considered by the Working Group in paragraphs 50 – 52 in the Report on Working Group 5. The Working Group decided not to include a guarantor in the definition of "debtor" because it was not possible to know how the domestic law in each State would treat guarantors and because the MLF should not curtail any domestic law rules that protected guarantors in enacting States. It was also decided that comprehensive guidance should be given to implementing States in the Guide to Enactment regarding the treatment of debtors under the MLF and the applicable domestic law regulating guarantors and secondary obligors.

	31	It was suggested to use the word 'customer' instead of debtor to adequately identify the debtor as a business. It was suggested that the word 'debtor' can be misconstrued to include a customer debtor, whereas a 'customer' is a business debtor.	Aston University (20) Mr Iyare Otabor-Olubor	The Secretariat notes that the use of the term "debtor" is consistent with Article 2(i) of the MLST and suggests that the current language in the draft MLF be retained.
Art. 2(1)(b) - Definitions	32	It was suggested to clarify if default can only exist when an obligation secured (in general terms, factors use the term "default" mostly for debtors of a receivable irrespective of any security rights)	FCI Legal Committee (14)	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that default is defined in Article 2, which refers to the default of the transferor. The definition enables the parties to provide for other grounds for default in their agreement.
Art. 2(1)(c) - Definitions	33	It was suggested to move the definition of "competing claimant" up to follow alphabetical order.	FCI Legal Committee (14)	The Secretariat recommends that the Working Group accepts the suggestion in this comment.
Art. 2(1)(d) - Definitions	34	According to the current definition, even if a future receivable has no underlying legal relationship at all and only the possibility of future claims, it can be transferred in factoring business. In practice, there are different views regarding whether such future receivables without underlying legal relationship are reasonably predictable and relatively certain. It was suggested that the MLF sets a clearer scope for the definition of "future receivable".	ICC China (2) Ms Xu Jun	The Secretariat recalls that there was a policy decision made by the Working Group on this relatively broad definition of receivables. The Working Group is invited to consider the drafting of this provision.
	35	The definition of receivable in Art.2(1)(d) of the draft MLF includes reference to a receivable that "arises" after a transfer agreement is entered into. It was suggested that the word "arises" is replaced by the word "acquired" in the definition, to be consistent with Art.5(4) which refers to the acquisition of rights in the receivable. The term "arises" implies that future receivables are claims which are not yet created; yet, "acquires" in Art. 5(4) indicates that what matters is whether the assignor obtains the	Zhongnan University of Economics and Law (1) Ms Meiling Huang & Jing Zhang	The Secretariat recalls that the usage of "arises" was taken from the corresponding article of the MLST. On that basis, the Secretariat would suggest that "arises" may be retained to keep consistency. However, there is merit in the suggestion, and therefore the WG may wish to consider this issue further.

		receivable or the power to assign it. In this context, reference was made to the distinction between relative future property and absolute future property in Dutch law, under which an existent receivable might be a relative future property but not an absolute future property.		
	36	It was suggested that a definition of current receivables is provided for in the MLF.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the RC does include a definition of existing receivable in Art. 5(b). However, the Secretariat queries whether such an approach will be necessary for the MLF. The WG may wish to consider this issue further.
Art. 2(1)(e) - Definitions	37	It was suggested that the definition of 'proceeds' is broadened to refer to an account with any authorised deposit-taking institution. Non-bank financial institutions may be authorised to receive deposits.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 2(1)(f) - Definitions	38	It was suggested that Art.2(1)(f) is amended to define receivable as a right to payment of a sum of money arising from contracts (e.g. monetary claims arising from the sale or lease of real property). There is no convincing reason why such monetary claims are not a receivable. A comparison was drawn with Arts. 2(a) and 9(3) UN Convention on the Assignment of Receivables), and with the concept of "account" in Art. 9 UCC under Chinese law and under PPSAs. The suggested broader definition would then include monetary claims out of contracts, with an exclusion list of special types of pecuniary contractual claims (e.g. negotiable instruments, deposit accounts and letter of credits).	Zhongnan University of Economics and Law (1) Ms Meiling Huang & Jing Zhang	The Secretariat recommends that the Working Group may not need to alter the MLF on the basis that the WG already considered this issue and decided upon a narrower definition of a receivable that does not require an exclusion.

	39	Concern was raised about the lack of definition in relation to 'receivables' which may cause uncertainty, since the MLF does not apply to the transfer of receivables arising from various financial services.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
	40	It was suggested that the sentence 'A receivable does not cease to be a receivable as defined by this section if it is consolidated or refinanced by the parties to it' is not clear and confusing.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that this sentence was added during Working Group 5 after a lengthy discussion.
	41	It was suggested that receivables can potentially include other forms of legal tender other than money.	Aston University (20) Mr Iyare Otabor-Olubor	The Secretariat suggests that this issue be dealt with in the Guide to Enactment.
	42	It was made clear that the PEB commentary on the definition of "receivable" involved two different sets of payment obligations: one is by the card holder to the card issuer and the other by the card issuer to the merchant/seller of goods or services. The PEB concluded that the "receivable" payable by the card issuer is a "payment intangible" rather than an "account" under the UCC.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that no action is required in response to the recommendation in this comment.
Art. 2(1)(f)(iii) - Definitions	43	It was questioned whether it is appropriate to include the payment obligation for a credit card transaction in the scope of receivable in Art. 2(1)(f)(iii). Under the credit card transaction, the relationship between the issuer and the cardholder may be under an entrustment contract or a legal relationship of borrowing and lending, which is not based on the receivables arising from the sale of goods, the provision of labor services and other businesses in the normal business process of traditional enterprises, nor the creditor's rights arising from the sales of enterprises. By including the payment obligations arising from the credit card transaction in the scope of receivable in the	ICC China (2) Ms Xu Jun	The Secretariat recommends that the WG may not need to change the drafting of this provision. The Working Group has previously considered issues raised in relation to credit card transactions and relevant concerns are adequately addressed in the current drafting.

		factoring business, it may conflict with the laws of some countries. It was also questioned whether this is feasible in factoring business.		
	44	It was suggested that the MLF should address the risks that may be involved in credit card transactions, for example, the debtor might charge/lose his credit card after which the bank should ask the debtor's prior consent to withdraw the debt amount from his new credit card in order to fulfil the transfer transaction.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the description of credit card payment in the draft MLF is consistent with RC (Art.10(4)(c) and Art. 9(3)(c)) regarding credit card transactions or the financing of receivables arising from credit card transactions.
	45	It was suggested to clarify whether this considers the transfer of each receivable within the credit card relationship of a bulk transfer.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment. The Secretariat further suggests that Article 5(1) adequately addresses the issue, as the parties may choose whether to transfer such receivables in bulk or individually.
Art. 2(1)(g) – Definitions	46	The provision presumes the existence of an official Registry for factoring operations, which in Portugal, and possibly in most other EU countries, does not exist.	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat suggests that the Working Group may not need to consider this issue further. The Working Group has reaffirmed that the MLF will be based on a factoring Registry.
Art. 2(1)(h) – Definitions	47	It was suggested that Art.2(1)(h) is amended to exclude the creation of a security right in the receivable from the definition of a security transfer. This is because the definition goes too far, and a security right does not always create a right in a receivable by agreement. An example given was that a pledge of receivables creates a limited right of pledge, but it is not a transfer. Similarly, the possibility of a right being created through a security transfer does not mean that this is what makes it a transfer. Following this line of reasoning, Art.2(1)(h)	Zhongnan University of Economics and Law (1) Ms Meiling Huang & Jing Zhang	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat notes that the Receivables Convention contains language in the definition of assignment that does not purport to characterize the nature of a "pledge" as an assignment, but it deems it to be so for the purpose of

		would then read: "Security transfer" means a transfer of a receivable by agreement to secure payment or other performance of an obligation, <i>regardless of whether it creates a security right in the receivable</i> [...].		the Convention. The Secretariat notes that drafting in the Receivables Convention might provide drafting for the Working Group to further consider.
Art. 2(1)(i) - Definitions	48	It was suggested that the definition of 'transfer' should provide that a transfer means the transfer of rights in a receivable to another person and, if the transfer is a security transfer, includes the creation of rights in a receivable by agreement.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
	49	It was suggested that perhaps it could be made clearer that the definition of transfer also includes a pledge. For example, a transfer for security purposes is prohibited in the Dutch Civil Code.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat notes that the definition of security transfer does not refer to a specific security device such as a pledge as States may have different security devices. The Secretariat suggests that the Guide to Enactment could invite enacting States to be more specific.
	50	It was suggested that the definition of "security transfer" is circular. "Security transfer" means a transfer of a receivable whereas the definition of "transfer" of a receivable means a security transfer.	Unicredit Bank (12) Ms Alesandra Valasuteanu	The Secretariat recommends that the Working Group may not need to change the drafting of this provision, as the as the definition of transfer is an umbrella definition capturing two types of transfers.
Art. 2(1)(i)(ii) - Definitions	51	It was suggested that the sentence "Where the context requires, 'transfer' also means the rights of a transferee arising from a transfer" might not be necessary. On one hand, transfer is described as a legal action, on the other hand as "rights of the transferee".	FCI Legal Committee (14)	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that this matter has been previously discussed in paragraph 88 of the Report on Working Group 5, where the Working Group agreed to use "right"

				as a substitute for “interest” in the definition of “security transfer”.
Art. 2(1)(j) – Definitions Art. 5(1) – Requirements for the transfer of a receivable	52	It was suggested that Art.2(1)(j), in defining a transfer agreement, fails to distinguish two different issues: (1) what is a transfer agreement; and (2) what are the requirements for a transfer agreement to be effective (set out in Art.5(1)). An example given was that an oral agreement of a transfer is also an agreement, though it may not be effective or enforceable. Following this line of reasoning, Art.2(1)(j) would read: “Transfer agreement” means an agreement providing for the transfer of a receivable, <i>with no reference to Art.5(1), which separately sets out the requirements for the agreement to be effective.</i>	Zhongnan University of Economics and Law (1) Ms Meiling Huang & Jing Zhang	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat’s understanding is that Art. 2(1)(j) provides that an agreement will not qualify as a transfer agreement under the MLF unless it satisfies the requirements in Art. 5(1). This is therefore not a question of effectiveness, but nonetheless require further consideration.
Art. 2(1)(k) - Definitions	53	It was questioned whether the “person to whom or in whose favour a receivable is transferred” means that in the case where the receivable is transferred to another person on their behalf (e.g. a transfer to a security trustee or an agent), the transferee is the beneficiary or principal?	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 2(1)(m) - Definitions	54	It was suggested to clarify, in an accompanying document, whether an oral communication that was recorded qualifies as “writing” in this definition.	FCI Legal Committee (14)	The Secretariat notes that this issue will be dealt with in the Guide to Enactment.
Art. 3(1) – Party autonomy	55	It was suggested that the purpose of the relevant articles is added.	FCI Legal Committee (14)	The Secretariat notes that this issue could be dealt with in the Guide to Enactment, as UNIDROIT customarily addresses the purpose of articles in supporting documentation, rather than the instrument itself.

	56	It was requested to explain the reasons to contract out of the Law.	Embassy of the Republic of Cyprus to Italy (17) Ms Kypriani Stavrinaki	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
Art. 4 – General standards of conduct	57	It was suggested that it is considered whether the duty to act in good faith and in a commercially reasonable manner should be left to national law and be capable of derogation by national states.	Global Supply Chain Finance Forum (GSCFF) (8) Ms Xu Jun	The WG approved Art. 4 in the draft MLF in paragraph 91 of the Working Group 5 Report.

Chapter II – Effectiveness of transfers of receivables between parties

Article number	#	Comment/proposal	Submitted by	Secretariat response
Art. 5(1)(a) – Requirements for the transfer of a receivable	58	It was suggested that it is considered to clarify that “signed” includes electronic signature/electronic acceptance.	Global Supply Chain Finance Forum (GSCFF) (8) Ms Xu Jun	The Secretariat suggests that this matter be dealt with in the Guide to Enactment.
	59	It was suggested to specify whether a document can be signed electronically and, if so, which type of electronic signature should be used. It was questioned whether there should be a definition of “signed” particularly for electronic transfers.	Embassy of Poland in Italy (19) Ms Joanna Herczyńska FCI Legal Committee (14)	The Secretariat suggests that this matter be dealt with in the Guide to Enactment, as the comment raises the same
Art. 5(1)(b) – Requirements for the transfer of a receivable	60	It was suggested that the use of the phrase “transfer agreement” is needlessly complex and suggests that some sort of contract is needed. It was suggested that it is shortened to “A transfer is only effective if...”	FCI Legal Committee (14)	The Secretariat suggests that this matter be further considered by the Working Group.
	61	It was suggested that the MLF follows the UNCITRAL Model Law, which merely provides that a security agreement must meet the specified requirements. At the moment, it is not clear what is meant by “effective” and whether this means that the agreement is only effective between the transferor and the transferee, or whether it also encompasses effectiveness against the debtor.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group

		It was questioned whether the MLF should permit a receivable to be transferred other than by a written transfer agreement which is signed by the transferor. Should a transferor be able to adopt or accept the terms of a transfer agreement by conduct?		
	62	It was suggested that the right of the transfer should include the right to transfer. Security rights, other than ownership rights, give only limited rights for transfers (art.34(1)). The “rights” should be better described. Domestic law will decide what kind of right the transferor must have to transfer receivables. The MLF cannot have rules for all such rights, e.g. capacity, power of attorney etc.	FCI Legal Committee (14)	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat notes that the other laws of an enacting State that governs such matters (e.g, the right capacity to act for a minor) would remain applicable.
Art. 4 – Requirements for the transfer of a receivable	63	The phrase “...describes the receivable in a manner that reasonably allows its identification...” is not sufficient here, because the information to be included in the transfer contract should be determined according to the law of the state. Accordingly, it was suggested to add the phrase “to be specified by the law of the enacting state” after Art.5(1)(c).	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that the current drafting in the MLF may already be sufficient. It is suggested that as a policy position, the MLF should not encourage States to craft their own, more specific description standards. However, nothing in the MLF precludes States from doing so.
Art. 5(1)(c) – Requirements for the transfer of a receivable	64	It was suggested that it would be beneficial if Art. 5(1)(c) expressly required a transfer agreement for a part of a receivable to specify the percentage or proportionate share of the receivable which is being transferred. This would prompt parties to turn their mind to this issue when they enter into the transfer agreement and so avoid any potential for future uncertainty over identifying the part of the receivable which has been transferred.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter is further considered by the Working Group.

	65	It was suggested that the Article be amended to read: <i>A receivable may [only] be transferred by a transfer [agreement] if the transferor has rights in the receivable or the power to transfer it.</i>	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter is further considered by the Working Group.
Art. 5(2) – Requirements for the transfer of a receivable		It was suggested to use “and” instead of “or”. So, it was suggested that the provision should be rephrased to read: <i>A receivable may be transferred by a transfer agreement if the transferor has rights in the receivable and the power to transfer it.</i>	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that this substantive change would be a departure from established international standards.
	66	It was suggested to add “(d) all of its receivables except for specified items or types”. Reference was made to the Luxembourg Protocol to CTC, art. 5.	University of Oxford (4) Sir Roy Goode	The Secretariat suggests that this matter is further considered by the Working Group.
Art. 5(3) – Requirements for the transfer of a receivable	67	It was suggested that the MLF refers to the law of each enacting state regarding the transfer of the receivables. According to Egyptian legislation, the rights relevant to the contract shall be transferred only once, even if the transferor had transferred a part thereof, and there is no multiple transfer to rights relevant to the same contract.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that the current language in the draft MLF is sufficient.
	68	It was suggested that bulk transfer without indicating each receivable appears problematic.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that the approach in the draft MLF is based on the policy reflected in UNCITRAL instruments in order to reduce the costs of bulk transfers.
	69	It was suggested that the insolvency perspective (Article 271(3) Spanish Law) generates some doubts in enforcing this	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.

Art. 5(4) – Requirements for the transfer of a receivable	70	Although it is reasonable that the transferee has a claim to the proceeds of the receivable, it was suggested that this is likely to incur resistance from the Dutch banks to the extent they also act as account banks. The right to the proceeds in Art. 6 may need more elaboration – is it in the nature of a pledge that arises by operation of law?	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter is further considered by the Working Group.
Art. 6 – Proceeds	71	Article 7, when read with Article 33(3), seems to have the outcome that if a secured receivable is transferred, the security is dragged along with the receivable and the transferee becomes a secured creditor under a security granted to a third party. This could raise the risk for the residual security holder and questions of enforcement of an undivided share in a security interest held in the name of another person, and whether there are or should be obligations of the security holder in favour of the transferee in relation to any recoveries. It was suggested that the Guide to Enactment could flag up that Articles 7 and 33 can be contracted out of.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter is further considered by the Working Group. The Secretariat affirms that these two articles could be contracted out of by parties under Article 3(1). There might not be any difficulty as explained in the comment as the secured creditor would be the transferor and after the transfer of a receivable the security package passes on automatically. There is no residual security holder in this scenario.
Art. 7 – Personal or property rights securing or supporting payment of a receivable	72	The EFL mentioned the same as MLF regarding the guarantees, but it is noticed that MLF does not mention any rules regarding the insurance against the risk of non-payment of debtors, practically in Egypt all financing contracts must be backed by insurance policies.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the relationship between enacting states, insurance law and factoring law is essential. The Secretariat notes that this matter will be dealt in the Guide on Enactment.
Art. 7(1) – Personal or property rights	73	It was suggested that it may be useful to give examples of “any personal or property right” in the Guide of Enactment.	FCI Legal Committee (14)	The Secretariat notes that this issue will be dealt with in the Guide to Enactment. One of the examples that the Guide is proposed to include

securing or supporting payment of a receivable				concerns a right in an immovable that would connect to article 39 of the MLF.
	74	It was suggested that the possibility fixed in Art. 7(2) is not common in Spanish Law (Article 1198 Código civil).	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.
Art. 7(2) – Personal or property rights securing or supporting payment of a receivable	75	The principles of Art. 8 differ from those established in the Portuguese legal system. The Portuguese Civil Code states in its Article 577 that (emphasis added): "1. The creditor may assign to a third-party, part or all of the receivable, regardless of the debtor's consent, as long as the transfer is not prohibited by a determination of the law or agreement of the parties and the receivable is not, by the very nature of the provision, linked to the creditor's person. 2. A covenant by which the possibility of transfer is prohibited or restricted shall not be enforceable against the assignee, unless the assignee knew of it at the time of the transfer."	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that the MLF takes a different approach disregarding knowledge of a restriction. This may be pointed out in the Guide to Enactment.
Art. 8 – Contractual limitations on the transfer of receivables	76	The prohibition on contractual bans of assignments was expressly welcomed.	FCI Legal Committee (14)	The Secretariat suggests that no action is required in response to this comment.
	77	When Art. 8 is read in combination with Art. 1 paragraph 4, the aim of the former to overrule any contractual ban on assignment does not seem effective against bans on assignment provided by the law, as it may be the case for Public sector entities. It was suggested that the MLF should provide clear indications against the right to	Assifact (16) Mr Alessandro Carretta	The Secretariat suggests that Art 1(3) of the draft MLF ensures implementing States could limit transfers in relation to public entities, however an implementing State could also render a statutory ban ineffective. The Secretariat suggests that this matter

	refuse the transfer once it is set and notified, where provided in the jurisdiction		could be dealt with in the Guide to Enactment.
78	<p>It was questioned whether subrogated rights can be specifically excluded in the model law.</p> <p>In some countries, when a right to claim on insurance is subrogated to the insurance company or its creditor, the debtor needs to be informed who the rights are subrogates to before it can take effect.</p>	<p>Aston University (20)</p> <p>Mr Iyare Otabor-Olubor</p>	<p>The Secretariat suggests that no action is required in response to this comment. The draft MLF does not deal with subrogation as upon payment to the transferee the obligation is satisfied. Similarly, when a bank pays on a stand-by letter of credit it would have reimbursement rights against the applicant, which are a matter of the letter of credit law and contract, and, thus, outside the scope of the MLF.</p>
79	<p>It was suggested that the possibility fixed in Art. 8 is not common in Spanish Law.</p>	<p>Universidad de Cádiz (27)</p> <p>Mr David Moran Bovio</p>	<p>The Secretariat suggests that no action is required in response to this comment.</p>
80	<p>It was suggested that Art.8(2) is amended to include the possibility of the transferor being liable for breach of an agreement, preserving the right of the debtor to claim damages from the transferor. The rationale underlying the suggestion is that the current paragraph goes too far in protecting the assignability of receivables. Denying obligatory remedies, namely contractual remedies, is unfair to the debtor who reaches a valid agreement with the transferor.</p>	<p>Zhongnan University of Economics and Law (1)</p> <p>Ms Meiling Huang & Jing Zhang</p>	<p>The Secretariat recommends that the Working Group may not need to change the drafting of this article. This matter has been previously discussed and it was determined that the MLF should provide a complete override of anti-assignment clauses without preserving a contractual right to claim loss.</p>
Art. 8(2) – Contractual limitations on the transfer of receivables			

Chapter III – Effectiveness of transfers of receivables against third parties

Article number	#	Comment/proposal	Submitted by	Secretariat response
Art. 9 – Registration	81	It was suggested to register the guarantees of the receivables which transferred from the transferor to the transferee. According to the Egyptian Civil Law, there is no need to register the notice itself.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that the MLF provides for an automatic transfer of a guarantee without the necessity of registration. Under the MLST, an assignment of a security right is effective without registration ie, an amendment.
	82	<p>It was suggested that the MLF does not take into account the fact that many factoring agreements are not disclosed to the debtor. The registration of the transfer could be detrimental to the purpose of the agreement as the debtor could easily check the register and find out that its payables have been transferred, thus breaching the non-disclosure agreement between the factor and its client.</p> <p>The provision in Annex A, Clause 10 does not fit with the “selection approach” in which the client could transfer different debtors (or even different portfolios of receivables towards the same debtor) to different transferees, thus requiring to identify the debtors in order to make the registration of the transfer sufficiently determined and reliable for third parties.</p> <p>Clause 4 of Annex A states that “A notice may be registered before a transfer or the entry into of a transfer agreement to which the notice relates.” In this case, it’s not clear when the transfer becomes effective against third party rights.</p>	Assifact (16) Mr Alessandro Carretta	<p>In relation to paragraphs 1 and 2, the Secretariat notes that the registry may be set up to capture an identification number of the transferor rather than its name, in which case registration may not breach a non-disclosure agreement. It is expected that a rational factor that enters into an “undisclosed arrangement” with the transferor would not identify debtors in a registration.</p> <p>In relation to paragraph 3, the Secretariat suggests that the Working Group may wish to give the drafting of Articles 5 and 9 further consideration.</p> <p>In relation to paragraph 4, the Secretariat suggests that this matter be dealt with in the Guide to Enactment. The Guide to Enactment should explain that the Registry software will issue the transferee with a unique passcode for</p>

	<p>The principle that “<i>The registration of an amendment or cancellation notice is effective regardless of whether it is authorised by the transferee</i>” (Clause 15) seems particularly dangerous for the transferee’s interest.</p> <p>It was suggested that in Annex A, clause 7, letter d) “<i>The period of effectiveness of the registration</i>” should be clarified in order to assure that the rights of the transferee regarding receivables already transferred and outstanding at the date of expiry of the transfer is not affected. Although the agreement to transfer future receivables may have a deadline, once the single receivable is transferred, such individual transfer has no expiry date.</p>		<p>the registration, at the time it is made, and that a registration will only be able to be amended or cancelled if that unique passcode is entered. The transferee can manage this risk by ensuring that it stores the passcode securely.</p> <p>In relation to paragraph 5, the Secretariat suggests that this matter be dealt with in the Guide to Enactment. The Secretariat suggests that this matter is a risk for the transferee to manage. If the transferee holds (eg) a 10-year receivable and the registration period is only 7 years, then they will need to renew the registration before the end of the 7-year period. The Registry system can be set up to send transferees a reminder before the expiry date.</p>
<p>83</p>	<p>It was questioned whether ‘third parties’ includes debtors, or should the phrase be ‘third parties (other than debtors)’? It was questioned whether it should be specified that the transfer is effective only if ‘it is effective between the parties under Article 5 and’?.</p>	<p>The University of Sydney Law School (18)</p> <p>Ms Sheelagh Mccracken</p>	<p>The Secretariat suggests that this matter is further considered by the Working Group. The Secretariat notes that third parties encompass essentially competing claimants, which the debtor is not. Third-party effectiveness is achieved by registration only, which then determines priorities among competing claimants. From the context of these two chapters, one shouldn’t conclude that this article/chapter applies to debtors.</p>

	84	It was suggested that this creates a difficulty with regional registries.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat notes that this issue will be dealt with in the Guide to Enactment. Nothing in the MLF precludes a regional association to designate a single registry.
Art. 11 – Continuity in third-party effectiveness upon a change of the applicable law to this Law	85	It was suggested that continuity might not be needed if transfer of receivables was once effective.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment. The policy approach suggested in the comment would be inconsistent with the approach of UNCITRAL instruments. This is to protect transferees in case the transferor relocates to another State against subordination of their priority.

Chapter V – Priority of a transfer

Article number	#	Comment/proposal	Submitted by	Secretariat response
All Articles of Chapter V	86	<p>It was suggested that Chapter V needs clarifications in much more detail and common law precedence should be taken into account.</p> <p>Special attention should be given to Confidential Factoring agreements and the mechanisms of registering such a confidential agreement.</p>	<p>Embassy of the Republic of Cyprus to Italy</p> <p>Ms Kypriani Stavrinaki</p>	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment. The draft MLF facilitates any type of a factoring arrangement, including non-notification confidential).
Art. 12 – The Registry	87	It was asked whether the registry will be one or per country.	<p>Embassy of the Republic of Cyprus to Italy</p> <p>Ms Kypriani Stavrinaki</p>	The Secretariat confirms that each implementing State would create their own registry and that the MLF would not provide for an international factoring registry. The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
Art. 13 – Competing transfers	88	It was suggested that the MLF addresses the issue of priority between transfers where creditors of receivables enter into multiple factoring contracts for the same account receivable, resulting in multiple factoring parties claiming rights, without all factoring contracts being registered, or even without notice of transfer.	<p>ICC China (2)</p> <p>Ms Xu Jun</p>	The Secretariat concurs that under Art. 13, priority is based on registration and there is no rule when no party is registered. However, the Secretariat suggests that this situation is not likely to occur in practice. The Secretariat notes that domestic PPSAs and the UCC operate differently as on attachment a security interest is enforceable against third parties, but it is vulnerable if unregistered. In such regimes, a clear priority rule is needed to say that registered beats unregistered.

				However, the MLST and draft MLF are different as on creation the interest of a transferee is ineffective/unenforceable against third parties.
	89	It was suggested that for the avoidance of doubt, the phrase “whether or not the registrant had knowledge of a previously registered transfer” could be added.	University of Oxford Sir Roy Goode	The Secretariat notes that this matter is dealt with in Art. 20 of the draft MLF.
		It was questioned whether this Article should refer to the ‘time of registration’ instead of the ‘order of registration’ for consistency with Articles 19 and 52(5). It was suggested to clarify that the ‘time of registration’ is the time a registration notice becomes effective under Annexe A, clause 11(1).	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat suggests that the currently language might be sufficient, as Article 13 concerns a relative priority against a competing transferee. The other provisions’ focus is on priority as at a specific point in time rather than in relation to a competitor.
Art. 15 – Impact of the transferor’s insolvency on the priority of a transfer	90	This article provides that in the event of insolvency of the Debtor, the credit of the transferee shall be ranked first in relation to other creditors, without prejudice to the credits that must be ranked first under the law. This provision differs from the provisions of the Portuguese Insolvency and Company Reorganization Code (CIRE), with a clear differentiated treatment in relation to other credits.	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that <u>this is a matter not dealt with in the MLF that concerns only some aspects of the transferor’s insolvency in art. 15.</u>
	91	It was suggested to clarify if and how the registration is effective also against any actions and in particular voidable actions from the insolvency trustee (or comparable organisms) in the case of client’s insolvency.	Assifact (16) Mr Alessandro Carretta	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment as voidable actions are outside the scope of the project and nothing in the MLF affects those actions.

	92	It was questioned whether this intends to override the law of insolvent transactions to preserve the validity of the transfer agreement.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat notes the Article's heading should make it sufficiently clear that the purpose of the provision is not to override the relevant provisions of the applicable insolvency law.
	93	Article 15 seems intended to address the issue of having the effectiveness of the ongoing assignment of receivables cut off upon the insolvency of the transferor (even as contrasted with having the assignment cease upon the commencement of a court-controlled insolvency case), by implication in referring to the "commencement of insolvency proceedings," but does not directly address the use merely of "insolvency" to impact the rights of the transferee.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter be further considered by the Working Group. The Secretariat notes that the article addresses an ongoing transfer at the time of commencement of the insolvency proceedings.
	94	It was suggested that Art. 15 could be opposed by Spain Insolvency Law (Art. 226). It was suggested that this could be clarified if the MLF establishes a special rule (or not).	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.
Art. 16 – Transfers competing with claims arising by operation of law	95	It was suggested that the object for including this article is not obvious, and that it shall be more effective to stipulate the rights which shall have the priority over the right of the transfer.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the current MLF adequately addresses the suggestion in the comment.
Art. 17 – Transfers competing with	96	From the proposed text, it seems that the intention is that a creditor who has obtained a final court decision or an injunction has priority in the payment of the	Portuguese Association for Leasing, Factoring and Renting (ALF) (9)	The Secretariat suggests that no action is required in response to this comment. Article 17 requires for the

rights of judgment creditors		claim that is the object of the transfer, as long as these processes were initiated prior to the transfer to a third party. However, taking into consideration the current Portuguese legislation in force, if the judicial action does not have a suspensive effect on the disposal of the credit, then this provision is not applicable.	Mr Vitor Graça	steps to be completed for a conflict to arise rather than “initiated”.
	97	It was questioned whether this is intended to pick up garnishee orders.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be addressed in the Guide to Enactment. The Secretariat notes that garnishee orders are picked up. The bracketed language in para 1 would require the order to be served on the debtor to garnish the receivable.
Art. 17(2) – Transfers competing with rights of judgment creditors	98	It was acknowledged that this includes the entire credit line.	FCI Legal Committee (14)	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that would be the case if the credit line has been made available pursuant to an irrevocable commitment under para 2.
Art. 18 – Subordination	99	More explanation as to what this Article means was requested.	Embassy of the Republic of Cyprus to Italy Ms Kypriani Stavrinaki	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
Art. 18(1) – Subordination	100	It was suggested that it should be specified that “a person” in this Article refers to a transferee.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 18(2) – Subordination	101	It was questioned whether the subordinations will be registrable. If so, an assignee will take subject to the subordination.	University of Oxford Sir Roy Goode	The Secretariat notes that subordinations are not intended to be registrable and that the industry has reported that subordinations are

				relatively uncommon in practice. The Secretariat suggests that no action is required by the Working Group.
Art. 19 – Future advances and future receivables	102	Art. 19 seems clear as to priority of a security transfer to secure future obligations, but is there a means to protect the transferee from the argument that the security right only necessarily arose upon the creation of the receivable and therefore the hardening period [runs] from that moment rather than from the date of the instrument providing for the assignment for purposes of amounts owing previously?	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter be further considered by the Working Group.
	103	It is not entirely clear whether it is intended that a transfer may become effective if insolvency proceedings have commenced in respect of that transferor.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 19(1) – Future advances and future receivables	104	It was suggested that Art.19(1) is amended to exclude the possibility of a receivable coming “into existence”. This is because a receivable must exist in order to be acquired.	Zhongnan University of Economics and Law (1) Ms Meiling Huang & Jing Zhang	The Secretariat suggests that this matter be further considered by the Working Group.
	105	It was suggested that the text is rewritten to read: <i>The priority of a transfer of a receivable that is described in a notice registered in the Registry is determined by the time of registration, [regardless of] whether the receivable is acquired by the transferor, or comes into existence, before or after the time of registration.</i>	Embassy of Poland in Italy Ms Joanna Herczyńska	The Secretariat suggests that this drafting matter be further considered by the Working Group. The Secretariat notes that Clause 15 in the registry rules includes the same language.
Art. 20 – Irrelevance of knowledge	106	Article 584 of the Portuguese Civil Code provides that: "If the same receivable is assigned to several people, the assignment that is first notified to the debtor or has been accepted by him shall prevail."	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat suggests that no action is required in response to this comment.

	<p>On the other hand, under the terms of the provisions of article 587 of the same Civil Code, "The assignor guarantees to the assignee the existence and enforceability of the receivable at the time of the assignment, under the terms applicable to the business, free of charge or against payment, in which the assignment is integrated".</p> <p>Now, if the receivable has already been the object of a first assignment, at the time of the second assignment, it no longer exists because it no longer belongs to the assignee. Therefore, we do not see how, knowing that the credit does not exist, the Factor can still accept the assignment based only on the registration. On the other hand, this provision seems to go against what is established in article 22 (b) of the present Model Law on Factoring.</p>		
	<p>107 It was suggested that Art. 20 seems inconsistent with the principle of good faith. The specific wording ("The priority of a transfer is not affected by any knowledge that the transferee may have of another transfer") gives leeway for fraudulent behaviours and might be not admissible in some jurisdictions.</p>	<p>Assifact (16) Mr Alessandro Carretta</p>	<p>Same as above response on irrelevance of knowledge.</p>

Chapter VI – Rights and Obligations of the Parties

Article number	#	Comment/proposal	Submitted by	Secretariat response
Art. 21 – Rights and obligations of the transferor and the transferee	108	It was suggested that the MLF should either determine the minimum detailed information or terms about the transfer contract or to be specified by the law of the enacting state.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the minimum requirements are set out in the draft MLF. The Secretariat notes that the current MLF adequately addresses the suggestion in the comment.
	109	It was questioned whether this should be made subject to Article 3(1), which makes certain provisions of the Law mandatory.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 22 – Representations of the transferor	110	It was suggested that Art. 22(2) should be amended, and the transferor may undertake the fulfillment of the debtors' obligation if they failed to satisfy, as the parties may agree.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the draft MLF is designed to apply to both recourse and non-recourse factoring, and thus, there is no need to change Art. 22.
	111	The statement under Paragraph 1 (a) of Article 22 (<i>the transferor has the right to transfer the receivable</i>) conflicts with Paragraph 1, Article 8, and it was suggested that Paragraph 1(a) of Article 22 be deleted.	Filong Law Firm Mr Zhiping ZHANG	The Secretariat suggests that there is no conflict between Art. 8 and Art. 22. However, the WG may wish to give this matter further consideration.

	112	<p>Art. 22 seems somewhat contradictory when combined with the above-mentioned article 20 of the MLF. According to the provisions of article 587 of the Portuguese Civil Code, "The assignor only guarantees the debtor's solvency if he has expressly obliged to do so". Generally speaking, Clients state in their Factoring contracts that, to the best of their knowledge, on that date, the Debtor did not show any signs of possible inability to pay its obligations.</p> <p>We therefore believe that this presumption should be able to be overturned as already foreseen in the Portuguese Civil Code</p>	<p>Portuguese Association for Leasing, Factoring and Renting (ALF) (9)</p> <p>Mr Vitor Graça</p>	<p>The Secretariat notes that Art. 22(2) is subject to the party autonomy principle in Art. 3 and thus may be derogated from. However, the WG may wish to consider this issue further.</p>
	113	<p>It was suggested that Art. 22(1)(a) is re-worded to read "the transferor has the right or power to transfer the receivable", consistent with the differentiation between right and power made in earlier articles.</p>	<p>Global Supply Chain Finance Forum (GSCFF)</p> <p>Ms Xu Jun</p>	<p>The Secretariat notes that Art. 5(2) of the draft MLF uses the phrase "the transferor has rights in the receivable or the power to transfer it". The WG may wish to give this matter further consideration and align the text in Articles 5(2) and 22(1)(a).</p>
	114	<p>It was noted that Art 22 does not require the transferor to represent that the receivable "exists or will exist."</p> <p>It was suggested to clarify the paragraph that states that "the transferor does not represent that the debtor has, or will have, the ability to pay" by specifying whether the parties have the right to override this general rule (otherwise recourse factoring transactions would not be possible).</p>	<p>Assifact (16)</p> <p>Mr Alessandro Carretta</p>	<p>The Secretariat notes that the Party Autonomy principle provided in Art 3 of the draft MLF would allow parties to derogate from the general rule and thus allow recourse factoring and thus no change may be required.</p>

	115	<p>It was suggested that there should be a representation that the receivable is enforceable. The meaning of the reference to the 'right to transfer the receivable' was questioned. It was questioned whether this is a reference to authority to transfer or to the property right in the receivable.</p> <p>The inclusion of Article 22(1)(b) was questioned given that the MLF promotes transfers of receivables and seems to assume that receivables can be transferred multiple times.</p> <p>With respect to article 22(1)(c), is it not difficult for a transferor to represent that no future defences or rights of set-off will arise?</p>	<p>The University of Sydney Law School (18)</p> <p>Ms Sheelagh Mccracken</p>	<p>The Secretariat notes that Art 22 is generally consistent with Article of the RC. However, the WG is invited to consider this issue further.</p>
Art. 22(1)(c) – Representations of the transferor	116	<p>It was questioned how this interacts with commercial disputes</p>	<p>Universidad de Cádiz (27)</p> <p>Mr David Moran Bovio</p>	<p>The Secretariat suggests that no action is required in response to this comment.</p>
<p>Art. 23 – Right to notify the debtor</p> <p>Art. 26 – Notification of the debtor</p>	117	<p>It was suggested that the WG considers the fact that in practice, disputes may arise as to how to determine the completion of the notification. For example, when a company is acting as the debtor, which person/role in the company should be notified to? Besides mailing, may the notification be done through on-site handover? When the debtor receives the notification, how should it be proved from the point of the assignee or creditor?</p>	<p>ICC China (2)</p> <p>Ms Xu Jun</p>	<p>The Secretariat notes that the current MLF does not have any rules relating to representative capacity and that the matter might best be dealt with in the Guide to Enactment.</p>
Art. 23(1) – Right to notify the debtor	118	<p>It was suggested that notifications can be exclusively limited to the transferor (particularly when Art. 27(7) is read with Annexe clause 2(1)).</p>	<p>Universidad de Cádiz (27)</p> <p>Mr David Moran Bovio</p>	<p>The Secretariat suggests that this matter is further considered by the Working Group.</p>

Art. 23(2) – Right to notify the debtor	119	It was suggested to clarify 23(2) because the current wording is not fully aligned with the previous Paragraph of the same article and with Art. 27. After the notification of a transfer, only the transferee must be able to send payment instructions to the buyer and any payment instruction from the transferor should be clearly identified as ineffective.	Assifact (16) Mr Alessandro Carretta	The Secretariat notes that Art. 23(2) is consistent with Art. 13 of the RC and Art 58 of the MLST. However, the Working Group may wish to give this issue further consideration.
Art. 24 – Right to payment	120	It was suggested to amend Art.24(1)(c). The phrase “the transferee is entitled to be paid that amount by the other person” gives an obligation for a third party who is not a party of the transfer contract to pay to the transferee. As a result, there are two options for amending the clause, either to make it an obligation to be fulfilled by the transferor, or a right the transferee can legally use.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that the current language in the draft MLF is sufficient.
		The Transferee may acquire the right to claim the receivable on the third party to whom the payment was wrongfully made, but this can in no way exclude the possibility of the transferee also going against the Debtor and/or Adherent (Client/Seller), depending on the context of the situation. The wording of the Model Law should make this important aspect explicit.	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat suggests that the current language in the draft MLF is sufficient.
	121	It was suggested to amend the phrase “sent to the debtor”.	FCI Legal Committee (14)	The Secretariat suggests that this matter be further considered by the Working Group.

	122	It was suggested that the relationship between Article 24 and 27 be clarified. It was questioned whether the intended policy of Articles 24 and 27 to permit the transferee to bring multiple claims but prevent the transferee from recovering more than 100% of the face value of the receivable.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 24(1) - Right to payment	123	The following or similar should be added in order to underline that the Debtor must pay according to transferee instructions (in line with 27(2) and any breach must be settled to the transferee's satisfaction. <i>"Should payments made according to paragraphs (a) and/or (b) have occurred as a result of transferee's payment instructions not being observed by debtor and transferee not be unable to collect such payments according to paragraphs (b) and/or (c), the transferee is entitled to request the payment be made a second time, by the debtor, according to the most recent payment instructions sent by them to the debtor."</i>	Unicredit Bank (12) Ms Alesandra Valasuteanu	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 24(2) - Right to payment	124	It was suggested that the concrete meaning of the right of the transferee in Art. 24(2) from the perspective of the factor is clarified. The current formulation of the Article seems to introduce a right for the transferee to receive the goods that could be returned (to the transferor?)	Assifact (16) Mr Alessandro Carretta	The Secretariat notes that Art 24(2) reflects the MLST (art 59) and the RC (art 14). It is indeed intended to provide the right to a transferee to receive goods that could be returned. The goods would be returned to the transferor, which would protect the factor in a non-recourse arrangement when it can't recover the payment it made to the transferor.

	125	It was suggested that this is opposed to the creditor's right to sell (judicially or by similar proceedings) the goods but his inability (in the Spanish system) to retain them.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that the current language in the draft MLF is sufficient
Art. 24(3) – Right to payment	126	It was suggested that the rule as currently drafted gives the impression that it only applies for transfers made after the receivable arose. As future receivables can be transferred, and follow the same rules it was suggested to choose "arises" instead of "arose".	FCI Legal Committee (14)	The Secretariat suggests that the Working Group may wish to accept the recommendation in this comment. The Secretariat prompts the Working Group to consider whether this is an issue that might need to be checked throughout the MLF.
	127	It was questioned whether the fact that a transferee of a receivable may not retain more than the value of its right in the receivable means to cover the right of redemption of a transferor who transfers the receivable by way of security. The potential application of Article 35(1)(b) was also noted.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 25 – Principle of debtor protection	128	Please clarify the intention behind this limitation, as well as our understanding of applicability below. Example 1: If a German Debtor pays, according to the commercial contract with the Supplier, to an account located in Romania, and the Romanian Supplier (transferee) sells the receivable to a Swiss transferor, the transferor cannot collect in their account located in Switzerland unless Debtor agrees to this change of account. So, in order for the transfer to work properly, should the debtor disagree with the change of account, the Swiss transferor needs to open an account with a bank	Unicredit Bank (12) Ms Alesandra Valasuteanu	The Secretariat suggests that this matter be further considered by the Working Group.

		<p>in Romania. This seems to unnecessarily complicate the transfer.</p> <p>Example 2: Under FCI 2 factor system, Romanian Export Factor sells receivables acquired from Romanian transferees too an Import Factor in Germany that covers the non-payment risk of the Dutch debtor. According to the commercial contract between Romanian transferor and Dutch transferee, the account to which payment should be made in the absence of a transfer is located in Romania. If debtor does not consent to pay to IF's account which is open in Germany, which is the standard 2 factor system approach, the only option left is fast cash, which seldom causes operational risk. Should the intention be to allow a change of payment account jurisdiction but only to the state the debtor is located in, the limitation remains an issue any time the transferee is not located in the same State as the debtor.</p>		
Art. 26(2) - Notification of the debtor	129	It was suggested to include the requirement to send the notification to the debtor in his official language of his state or the language of the sale contract, or the language agreed by the parties to be dealt with, that is more flexible.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that Art. 26(2) is consistent with Art. 62(1) in the MLST, and Art. 16(1) of the RC.
Art. 26(4) - Right to payment	130	It was suggested to re-phrase Art. 26(4). The rule refers to chain transfers (Receivable is transferred from A to B, and from B to C) "All previous assignments" is too wide and should be limited by "transfers of that receivable". Alternatively: Wording in Ottawa 1988 Article 11-2 is fine. "2. - For the purposes of this Convention, notice to the	FCI Legal Committee (14)	The Secretariat notes that the current drafting is consistent with Art 16(3) of the RC, but that Art 62(4) of the MLST does contain the additional language "in that receivable", consistent with the proposal. The Secretariat suggests that this matter is further considered by the WG.

		debtor of the subsequent assignment also constitutes notice of the assignment to the factor.”		
	131	It was suggested to clarify the meaning of the following phrase: “4. <i>Notification of a transfer constitutes notification of all previous transfers.</i> ”	Assifact (16) Mr Alessandro Carretta	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.
	132	It was suggested that it is not clear what this Article is intended to achieve.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat notes that Art 26(4) of the draft MLF is consistent with Art 16(3) of the RC and Art 62(4) of the MLST.
	133	It was suggested that the ground to support does not appear so clear.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.
	134	Please clarify. What previous transfers are referred to here?	Unicredit Bank (12) Ms Alesandra Valasuteanu	The Secretariat suggests that no action is required in response to this comment
Art. 27 – Debtor’s discharge by payment	135	It was suggested to add a new paragraph after Paragraph 7 of Article 27: If the debtor receives notification of a transfer from the transferee whom has acted in accordance with Paragraph 7 of Article 27, the debtor shall not be discharged if the debtor continues to pay the receivable to the transferor, and the debtor shall make compensation for any loss thus caused to the transferee. The Draft does not provide for the approach in case the debtor receives notification of the transfer from the transferee but still pays the transferor instead of the transferee the receivable. Therefore, it’s recommended that the above provision be added.	Filong Law Firm Mr Zhiping ZHANG	The Secretariat suggests that this matter be further considered by the Working Group.

	136	We do not understand the scope of this provision. According to the provisions of article 577 of the Portuguese Civil Code, the assignment is made by the Creditor and to this extent, the notification of the Debtor must always have the intervention of the original creditor (assignor). This provision allows the guarantee that third parties do not unduly appropriate credits which were not assigned to them.	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat suggests that no action is required in response to this comment. While the MLF allows a transferee to give the notice to the debtor, a notice that comes from a person other than the transferor will be ineffective unless there has actually been a transfer. If a debtor does receive a notice from someone other than the transferor, art 27(7) allows the debtor to check whether it is genuine.
Art. 27(3) and (4) – Debtor’s discharge by payment	137	It was questioned how these Articles work with Article 26(4).	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that no action is required in response to this comment.
Art. 27(8) – Debtor’s discharge by payment	138	It was suggested that the sentence in Art. 27(8) should be rephrased to read: <i>This Article does not affect any other ground which discharges the debtor by its payment to the person entitled to payment, or to a competent judicial or other authority, or to a public deposit fund.</i>	FCI Legal Committee (14)	The Secretariat notes that the current provision is consistent with Art 17(8) of the RC and Art 63(10) of the MLST. However, the WG may wish to further consider this matter.
Art. 28 – Defences and rights of set-off of the debtor	139	It was suggested to mention in the MLF that the transferor is obliged to face any right or set-off that might be rendered by the debtor against the transferee.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that the policy objective of this comment is already addressed by the draft MLF.
	140	It was suggested that the relationship with Art. 22(1)(c) perhaps deserves additional clarification to underline the different debtor-transferor and debtor-transferee relationships.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.

	141	Once the transfer has been registered, the possibility to set-off should be limited to debts that have arisen prior to transfer registration and not for any future claims by debtor as this infringes on the very essence of factoring and other sale of receivables structures. All debts between parties (i.e. cross-sell, penalties, other services than transferred ones) should be set w/o impacting the transfer and, therefore, the transferee's right to collect according to its instructions (also supported by 23.1 and 27.2). This is also supported by the fact that, under a transfer that envisages the sale of the receivable, that receivable is no longer in the transferor's books at the time the debtor initiates the set-off and, therefore, the set-off cannot, in any case, occur.	Unicredit Bank (12) Ms Alesandra Valasuteanu	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 28(3) – Defences and rights of set-off of the debtor	142	It was questioned how this fits with Article 8 which does not permit any such action.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 29 – Agreement not to raise defences or rights of set-off	143	It was suggested that the word "effect" in Art. 29(3) is replaced with "effectiveness", because the latter is used throughout the entire text. Reference was also made to the fact that "effectiveness" is generally used in the UNCITRAL Model Law on ST instead of "effect".	Filong Law Firm Mr Zhiping Zhang	The Secretariat notes that Art. 19(3) of the RC uses the word "effect", however, Art. 65(2) of the MLST uses "effectiveness". The WG may wish to discuss this drafting issue.
	144	It was suggested that where signing is required, electronic signing should be permitted.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this matter is further considered by the Working Group.

	145	Debtors are unlikely to give up their right to set-off, while Factors are equally unlikely to enter into a transfer whereby their collection is impacted by elements outside their control, thus rendering the receivables uncertain.	Unicredit Bank (12) Ms Alesandra Valasuteanu	The Secretariat suggests that no action is required in response to this comment
Art. 30 – Modification of the contract giving rise to a receivable	146	It was suggested that the word “transferee” is replaced with “transferor”.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that the current formulation is correct.
	147	It was suggested to define the concept of “reasonable transferee”, which is currently undefined and may generate legal disputes.	Portuguese Association for Leasing, Factoring and Renting (ALF) (9) Mr Vitor Graça	The Secretariat notes that Art. 22(2)(b) of the RC and Art. 66(2)(b) of the MLST both provide for a “reasonable assignee” and a “reasonable secured creditor”.
Article 30(2)(b) – Modification of the contract giving rise to a receivable	148	It was suggested that the statement in Art. 30(2)(b) that “the receivable is not fully earned by performance” is difficult to understand and the sentence “in the context of that contract, a reasonable transferee would consent to the modification” is too speculative. The latter ignores that in judicial practice, it may lead to different determinations.	ICC China (2) Ms Xu Jun	The Secretariat notes that Art. 32(b) is consistent with the language in Art. 66(2)(b) of the MLST and Art. 20(2)(b) of the RC Convention.
Art. 31 – Recovery of payments	149	It was suggested that there are some industry issues with this statement, especially around unjust enrichment. Art. 31 seems to postpone the right of a restitution benefactor where mistaken payment has been made by the debtor/customer to the transferee, e.g. if the debtor has been misled into making payments to the transferor on the promise of a contractual performance, e.g. fraudulent misrepresentation. With credit card transactions	Aston University (20) Mr Iyare Otabor-Olubor	The Secretariat suggests that no action is required in response to this comment

		often facilitated by international card issuers, it is industry practice for customers to file chargebacks to claim back refunds where they may have been taken fraudulently. Art. 33 seems to contradict the practices of these card issuers.		
	150	It was suggested that this may be problematic in relation to commercial disputes. If the debtor returns the goods to the transferor, who (transferor or transferee) owns the payment back?	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.

Chapter VII – Collection and Enforcement

Article number	#	Comment/proposal	Submitted by	Secretariat response
Art. 33 – Collection of payment under a security transfer	151	Other than in the case of outright transfers, the transferee in a security transfer is allowed to collect only with the consent of the transferor or in case of a default of the transferor. Consequently, the “default” mentioned in 33-1 and the following paragraphs refers the default of the transferor, not the account debtor of the receivable. Therefore, in Art. 33(1) and the following paragraphs, it was suggested that it should read “after default of the transferor”.	FCI Legal Committee (14)	The Secretariat notes that the current provision is consistent with Art 82 of the MLST. However, the WG is invited to further consider this issue. The suggestion may not need to be implemented as “default” is defined in Art. 2. The Secretariat further notes that the “obligor” who owes an obligation that is not necessarily the transferor may default, triggering the enforcement rights, a situation which would not be covered if the proposed language in the comment were adopted.
Art. 33(2) – Collection of payment under a security transfer	152	More explanation on how Art. 33(2) would apply in practice was required. Isn't the transferee (i.e. the Bank) collecting from the debtor? If so, then how could the transferor provide consent to the transferee to collect before default occurs?	Embassy of the Republic of Cyprus to Italy Ms Kypriani Stavrinaki	The Secretariat notes that the current provision is consistent with Art 82 of the MLST. The consent would be given in a transfer agreement or subsequently in some writing.
	153	It was suggested that it may be easier to apply this to personal rights transfers than to property rights.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment
Art. 33(3) – Collection of payment under a	154	The reference to “transferor” should be to “transferee”.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this suggestion be accepted by the Working Group.

security transfer				
	155	It was suggested to consider replacing the word “transferor” with “transferee”, because the entire Art. 33 relates to the rights of the transferee.	Embassy of Poland in Italy Ms Joanna Herczyńska	The Secretariat suggests that this suggestion be accepted by the Working Group.
Arts. 33 – 35	156	It was suggested that apart from the sale of receivables and distribution of the proceeds thereof (Art. 36), other means of enforcement of the security transfer should be offered in the MLF. It was strongly advised that the MLF definitely allows the transferee to obtain the receivable in satisfaction of the secured obligation. It was suggested that one means of doing that would be clarifying the consequence of performance of the secured obligation by adding a provision before Art.33 in Section B “Security Transfer”: <i>After the secured obligation, for which a security transfer is made, is performed by the transferor, the receivable returns to the transferor automatically.</i> It was further suggested to allow the receivables to return to the transferor automatically instead of burdening the transferee with the duty to return the receivables to the transferor by adding a provision after Art.35 in Section B “Security Transfer”: <i>After default, the transferor and transferee may agree on definite acquisition of the receivable by the transferee in satisfaction of the secured obligation.</i>	Zhongnan University of Economics and Law (1) Ms Meiling Huang & Jing Zhang	The Secretariat suggests that the remedies provided for in the MLF are sufficient.
Art. 34 – Right of the transferee to sell a receivable	157	Mistake in the numbering of paragraphs – paragraph 3 follows paragraph 1.	Embassy of Poland in Italy Ms Joanna Herczyńska	The Secretariat suggests that this suggestion be accepted by the Working Group.
	158	Other than in the case of outright transfers, the transferee in a security transfer is allowed to collect only with the consent of the transferor or in case of a default of the transferor. Consequently, the “default” mentioned in Art. 34(1) and the following paragraphs refers the default of the transferor, not the account debtor of the receivable.	FCI Legal Committee (14)	The Secretariat notes that the current provision is consistent with Art 78 of the MLST. However, the WG is invited to further consider this issue. See also the Secretariat’s comment to comment

		Therefore, in Art. 34(1) and the following paragraphs, it was suggested that it should read “after default of the transferor”.		151 that pointed out that adding “of the transferor” might not be needed.
	159	Sequence of numbers are not correct; number 2 is missing.	ICC China (2) Ms Xu Jun	The Secretariat suggests that this suggestion be accepted by the Working Group.
	160	Serial numbers after Paragraph 1 of Art. 34 are incorrect.	Filong Law Firm Mr Zhiping Zhang	The Secretariat suggests that this suggestion be accepted by the Working Group.
Art. 35 – Distribution of the proceeds of collection or sale of a receivable and liability for any deficiency	161	There is a technical error. Paragraph 2(c) is missing.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that this suggestion be accepted by the Working Group.
	162	The reference to paragraph 2(c) seems incorrect – there is no such paragraph. Should it be 1(c)?	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that this suggestion be accepted by the Working Group.
Art. 35(1)(b) – Distribution of the proceeds of collection or sale of a receivable and liability for any deficiency	163	It was suggested that the payment to two or more subordinate competing claimants should be in order of priority.	University of Oxford Sir Roy Goode	The Secretariat suggests that this policy outcome might already be achieved by the current drafting.

Chapter VIII – Conflict of Laws

Article number	#	Comment/proposal	Submitted by	Secretariat response
All Articles of Chapter VIII	164	It was suggested that the fact that the issue of private international law in relation to assignment of debts is complicated and highly controversial is taken into account. Specifically, the negotiations on an EU draft regulation on third party effects have completely stalled. The reason is that a member of parliament resisted any rule that would allow some sort of party autonomy, even indirectly.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment
Art. 37 – Mutual rights and obligations of the parties	165	The heading and the formulation of this article, which deals with the law applicable to the contractual relationship between the transferor and the transferee and the contractual relationship between the transferor and the debtor of the receivable, should be reconsidered to more accurately reflect its contents and to ensure that the debtor of the receivable is not inadvertently presented as a party to the transfer agreement.	Kozolchyk National Law Center (NatLaw) Mr Spyridon Bazinas	The Secretariat notes that in the MLST and RC, paragraphs 1 and 2 of Art. 37 of the MLF were dealt with in separate articles. The Working Group may wish to consider whether Art. 37 needs to be amended to address the concerns raised in this submission.

Art. 38 – Effectiveness and priority of transfers	166	It was suggested that the policy of Art. 38 should be reconsidered to avoid differences with art 4 of the Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims (2018/0044 (COD)). A different rule for transfers of receivables in securitization transactions was proposed; namely, the law chosen by the assignor and the assignee (Art. 4(3)). Otherwise, it would be extremely difficult for States-Members of the EU and countries in Africa, Asia or Latin America that follow the law of one or the other EU countries to enact the MLF.	Kozolchyk National Law Center (NatLaw) Mr Spyridon Bazinas	The Secretariat notes that Art. 38 is consistent with Art. 36 in the MLST. However, given that the European rule was adopted following the adoption of the MLST, the Working Group may wish to give further consideration to this drafting issue.
	167	It was suggested that the Working Group considers to add a following option in Art. 38: "Except as provided in Art. 39, the law applicable to the effectiveness and priority of a transfer of a receivable [the State to specify a narrow range of transfers in specific transactions] is the law governing the Claim.". This would be consistent with the Japanese law and would not defer the practices established in financial transactions.	Embassy of Japan in Italy Yamashita Masamichi	The Secretariat suggests that this matter be further considered by the Working Group.
Art. 39 – Transfers of receivables relating to immovable property	168	It was suggested that the rule in Art. 39 is problematic from a Dutch perspective because, if a bank has the benefit of a right of mortgage, it will typically secure all present and future amounts payable to that bank, while specifying only one receivable or underlying loan agreement. The rule may limit the mortgage bank's ability to a sell part of its receivables in accordance with another law. From a Spanish perspective, the justification for the rule is not understood.	Goldberg Kohn Ltd (22) Mr Richard Kohn	The Secretariat suggests that this matter be further considered by the Working Group.

<p>Art. 40 – Enforcement of transfers</p>	<p>169</p>	<p>It was suggested to consider the possibility of merging Art. 38 and Art. 40, since the essence of Art. 40, is referring enforcement of a transferred receivable to the law governing priority under Art. 38.</p>	<p>Kozolchyk National Law Center (NatLaw) Mr Spyridon Bazinas</p>	<p>The Secretariat notes that the response given above applies to this comment as well.</p> <p>The Secretariat notes that Art. 38 is consistent with Art. 36 in the MLST. However, given that the European rule was adopted following the adoption of the MLST, the WG may wish to give further consideration to this drafting issue.</p>
<p>Art. 41 - Proceeds</p>	<p>170</p>	<p>Under Article 41, the law applicable to the third-party effectiveness and priority of a transfer of money, negotiable instruments or bank deposits as proceeds of receivables under Article 6, is the law applicable to the third-party effectiveness and priority of the transfer of the receivable from which those proceeds arose. It was suggested that this risks undermining the certainty and predictability of the law applicable to the rights of people who dealt with holders of money or negotiable instruments in the State in which they are located and holders of bank accounts in the State whose law is normally applicable to bank accounts. Thus, Article 41 should be reconsidered. These matters should be referred to the law applicable to proceeds of the same kind as the proceeds of the transferred receivables, that is, to the law applicable to rights in money, negotiable instruments or bank accounts.</p>	<p>Kozolchyk National Law Center (NatLaw) Mr Spyridon Bazinas</p>	<p>The Secretariat suggests that this matter be further considered by the Working Group.</p>
<p>Art. 42 – Meaning of “location” of the transferor</p>	<p>171</p>	<p>It was suggested to provide that the transferor is located in the jurisdiction in which it is incorporated or formed. It can be difficult to determine where a transferor has a place of business. By contrast, it is relatively simply to determine the place in which a company is incorporated.</p>	<p>The University of Sydney Law School (18) Ms Sheelagh Mccracken</p>	<p>The Secretariat notes that Art 42 of the draft MLF is consistent with Art 90 of the MLST.</p>

<p>Article 45 – Overriding mandatory rules and public policy (ordre public)</p>	<p>172</p>	<p>Article 45 deals with overriding mandatory rules but not with public policy. In addition, Article 45 does not deal with the law applicable to the question whether a court in the forum may take into account the overriding mandatory rules and the public policy of a State other than the forum State. Therefore, the text of this Article should be reconsidered with a view to aligning it more closely with Article 11 of the Hague Principles Choice of Law in International Commercial Contracts.</p>	<p>Kozolchyk National Law Center (NatLaw) Mr Spyridon Bazinas</p>	<p>The Secretariat suggests that this matter be further considered by the Working Group.</p>
	<p>173</p>	<p>There is no mention of “public policy” neither in the Article nor in the whole Draft (in contrast to the UNCITRAL Model Law on ST, which provides for public policy related provisions). It is questioned whether the term “public policy (ordre public)” should be deleted from the title of the Article for the sake of accuracy.</p>	<p>Filong Law Firm Mr Zhiping Zhang</p>	<p>The Secretariat notes that in the corresponding Article 93 of the MLST, there are additional provisions that do refer to public policy, whereas as this comment correctly points out, Art. 45 does not refer to public policy. The Working Group may wish to give this issue further consideration.</p>

Chapter IX - Transition

Article number	#	Comment/proposal	Submitted by	Secretariat response
Art. 49 – General applicability of this Law	174	Serial numbers of Art. 49 are incorrect.	Filong Law Firm Mr Zhiping Zhang	The Secretariat suggests that this suggestion be accepted by the Working Group.
	175	Mistake in the numbering – both points are mistakenly marked as point 2.	Embassy of Poland in Italy Ms Joanna Herczyńska	The Secretariat suggests that this suggestion be accepted by the Working Group.

Annexe A – Registry Provisions

Article number	#	Comment/proposal	Submitted by	Secretariat response
Clause 1(a)(ii) - Definitions	176	It was suggested that the phrase “electronic address” is replaced by the phrase “domain address”, because the former can mean an email address or “domain address” (e.g. www.address.com)	Aston University (20) Mr Iyare Otabor-Olubor	The Secretariat suggests that no action is required in response to this comment. An electronic address is well understood and used in the UNCITRAL instruments as well as actual registries.
Clause 1(h) – Definitions	177	Technical error – “a notice the information” should be “a notice of information”.	Aston University (20) Mr Iyare Otabor-Olubor	The Secretariat suggests that no action is required in response to this comment. The context of the sentence clearly indicates that it is the information contained in the notice that was registered.
Clause 2 – Transferor’s authorisation for registration	178	It was suggested that this clause is repetitive, because points 1 and 2 are covered by what is mentioned in point 5. This could be amended by merging 1,2 and 5 in one point. It was suggested that authorization in Clause 2 (4) needs to be deleted or cleared.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment.
Clause 4 – Advance registration	179	It was suggested that Clause 4 contradicts Clause 2. The notice issued from the transferor needs to be supported with a transfer agreement and the notice should be in writing, in all cases. The registration for a notice that is not supported by a signed transfer agreement cannot be allowed, so long as the notice	Cairo University (6) Ms Elham Mabrouk	The Secretariat queries whether the phrase “before a transfer” is necessary to retain. The language mirrors MLST that refers to the creation of a security right, however this may be because one can create a security right orally under the MLST if possession is delivered to the

		satisfies the conditions and terms that must be provided in the transfer contract. It was suggested that the clause is re-worded to read: <i>A notice may be registered before or after entry into force of the transfer agreement.</i>		creditor. This is not possible under the MLF ie, there can't be a transfer without a transfer agreement. Therefore, the Working Group may wish to consider whether "before a transfer" is redundant.
	180	It was suggested that this Clause is shocking in the context of the Spanish system.	Universidad de Cádiz (27) Mr David Moran Bovio	The Secretariat suggests that no action is required in response to this comment.
Clause 5 – Conditions for access to registry services	181	It was suggested to delete Clause 5(2). A notice has been defined in Art. 1(1).	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment. The suggestion is inapplicable to the purpose of paragraph (2).
Clause 6 – Rejection of the registration of a notice or a search request	182	It was suggested to delete Clause 6(1)(b) and rephrase Clause 6(1) to cover the missing, wrong, illegal information. If Clause 6(1)(b) is intended to cover only the term of the transfer assigned by the transferor and not exceed the specified period by the State Law, the Article should be amended to clarify this point.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment. The Registry does not verify whether the information is wrong or illegal, and the case of missing information is already covered.
Clause 8 – Transferor's identifier	183	It was suggested to delete Clause 8(2). It is preferable to unify the requirements of identifying the transferor for all types of notice. This will be more consistent with what was mentioned in Clause 9(1) which identifies the transferee.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that Clause 8(1) appears to suggest that there could be two alternative identifiers for a transferor – either a name or some other identifier – for the registrant to choose from. The Working Group may wish to consider whether Clause 8 needs to be amended to clarify whether a State needs to choose one of the two

				identifiers or enable a registrant to select one. The latter would increase the burden of searchers.
Clause 9 – Transferee’s identifier	184	It was suggested that Clause 9 should include the same item as mentioned for the transferor’s identifier in Clause 8. Namely, <i>“The enacting State should specify the manner in which the name or other identifier is determined if the name or other identifier is legally changed after the issuance of the relevant document referred to in paragraph 1”.</i>	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment .
Clause 11(2)	185	It was suggested that it is better to state a clear date of cancellation rather than information “no longer being accessible” It was also suggested to consider including floating charges in the Register as well, in which case upon registration of a transfer, any floating charge will be easily identifiable in which case the transferee will need to request a “waiver”/“exclusion” from the registered floating charge. It should be clarified that registration of a transfer, especially since this registration is in a different register from that kept by the Registrar of Companies, should have priority over future registered Floating charges i.e. the bank registering the future floating charge should take into account that the receivables transferred are excluded from assets that are captured under the charge and that the transferee has priority over these receivables.	Embassy of the Republic of Cyprus to Italy Ms Kypriani Stavrinaki	In relation to paragraph 2, the Secretariat notes that a floating charge will be covered as a “security transfer” and suggests that no change is needed to the text. In relation to paragraph 3, the Secretariat suggests that this is a matter for the Guide to Enactment as it is a jurisdiction-specific suggestion that would not apply uniformly.

Clause 12 – Period of effectiveness of the registration of a notice	186	It was suggested that Clause 12(4) is deleted. Clause 12(3) should cover the period of effectiveness of the registration for the Amendment Notice as well.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment .
Clause 14 – Compulsory registration of an amendment or cancellation notice	187	It was suggested that Clause 14(1)(b) should be deleted. It was suggested that Clause 14(2)(a) should be deleted. It was suggested that Clause 14(3) should be amended to expose a penalty on transferee. It was suggested that Clause 14(4) should be deleted.	Cairo University (6) Ms Elham Mabrouk	The Secretariat notes that there may be the need to add a comma after “related initial notice in Clause 14(4), line 2.
	188	Should state the ‘transferor’, not the transfer.	Unicredit Bank (12) Ms Alescandra Valasuteanu	The Secretariat suggests that the Working Group accepts this suggestion to modify Clause 14(2)(b) in accordance with the comment.
Clause 15 – Effectiveness of the registration of an amendment or cancellation notice not authorised by the transferee	189	It was suggested that Clause 15 is included at the end of Clause 14.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment .
	190	It was suggested that it needs to be made clear in this Article that an amendment or cancellation of the registration by the transferor without the authorization of the transferee is effective only in the case agreed in Paragraph 5, Article 14 (<i>If the transferee does not comply with the transferor’s request made in accordance with paragraph 4 within [a short period of time to be specified by the enacting State] after its</i>	Filong Law Firm Mr Zhiping Zhang	The Secretariat notes that the transferee is able to control whether the registration is amended or cancelled, because it has control of the passcode or otherwise the system is designed to enable only the transferee to submit an amendment or cancellation notice. The Secretariat

		<i>receipt, the transferor may seek an order for the registration of an amendment or cancellation notice through [a summary judicial or administrative procedure to be specified by the enacting State]) in order to avoid this Article being misunderstood as that no authorization by the transferee is required for the registration of amendments or cancellations in any case.</i>		suggests that no action is required in response to this comment .
	191	It was questioned whether the reference to “transferee” should be to “transferor”. The amendment or cancellation of a registration affects the transferee, so it is not clear to us why the consent of the transferee is not required.	The University of Sydney Law School (18) Ms Sheelagh Mccracken	The Secretariat suggests that the Working Group may not need to consider this issue. The provision reflects the policy of the UNCITRAL instruments in that the transferee is responsible to safeguard access to its registered notices and can’t argue that any amendment or cancellation submitted through its account or using its passcode was not authorised and thus remains effective.
Clause 16 – Search criteria	192	It was suggested to add the identifier of the transferee as well. The identification of the transferee considered one of the required information to register the initial notice according to Clause 7 of this Annexe.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment. The Secretariat notes that there is nothing in the MLF that precludes an enacting State to allow registry searches on the basis of the name of the transferee, without legal effect, though this is not best practice.
Clause 20 – The registrar	193	It was suggested to provide guidance for countries that already have a collateral registry for tangible movables but may want to expand its registry to pure intangibles such as receivables.	Aston University (20) Mr Iyare Otabor-Olubor	The Secretariat suggests that this matter could be dealt with in the Guide to Enactment.

Clause 22 – Removal of information from the public registry record and archival	194	It was suggested that this paragraph should be amended.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that no action is required in response to this comment.
Clause 23 – Correction of errors made by the Registry	195	It was suggested that the phrase “the notice was registered” needs to be clarified.	Cairo University (6) Ms Elham Mabrouk	The Secretariat suggests that the current wording of Clause 23 is sufficient. Secretariat suggests that no action is required in response to this comment .