



EN

**UNIDROIT Working Group on a Model Law on
Warehouse Receipts**

Fifth session (hybrid)
Rome, 5-7 December 2022

UNIDROIT 2022
Study LXXXIII – W.G.5 – Doc. 2
English only
November 2022

DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

1. This document contains the draft Model Law on Warehouse Receipts (MLWR). The draft MLWR is composed of four chapters so far:

- Chapter I – Scope and general provisions
- Chapter II – Issue of a warehouse receipt
- Chapter III – Transfers of warehouse receipts
- Chapter [XX] – Application and transition of this Law

2. The draft MLWR has tracked changes that implement the decisions made by the Working Group at its fourth session (28 February – 2 March 2022). Furthermore, it includes a new Chapter on the application and transition of the Law. Boxes in this document identify issues that the Working Group may wish to discuss further. Footnotes in this document specify why a particular phrase was deleted from the text of the MLWR.

3. The Secretariat is grateful to the assistance that Mr Marek Dubovec (International Law Institute) and Mr Bruce Whittaker (University of Melbourne, Member of the MLWR Working Group) provided in the preparation of this document.

PRELIMINARY DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

CHAPTER I – SCOPE AND GENERAL PROVISIONS	3
Article 1 – Scope of application	3
Article 2 – Definitions	3
Article 2A – Control of an electronic warehouse receipt	4
Article 3 – Party autonomy	4
Article 4 – International origin	4
CHAPTER II – ISSUE OF A WAREHOUSE RECEIPT	4
Article 5 – Issue of a warehouse receipt	4
Article 6 – Information to be included in a warehouse receipt	4
Article 7 – Additional information that can be included in a warehouse receipt	5
Article 8 – Amendment of information in a warehouse receipt	6
Article 9 – Loss of a warehouse receipt	6
Article 9A – Replacement of a paper warehouse receipt with an electronic warehouse receipt	6
CHAPTER III – TRANSFERS OF WAREHOUSE RECEIPTS	7
PART A. HOW A WAREHOUSE RECEIPT MAY BE TRANSFERRED	7
Article 10 – Transfer of a negotiable warehouse receipt	7
Article 11 – Transfer by assignment	7
PART B. EFFECT OF A TRANSFER OF A WAREHOUSE RECEIPT	8
<i>Division (I). Rights of a transferee generally</i>	8
Article 12 – Rights of a transferee generally	8
<i>Division (II). Rights of a protected holder of a negotiable warehouse receipt</i>	8
Article 13 – Transfer of a negotiable receipt to a protected holder	8
Article 14 – Rights of a protected holder of a negotiable warehouse receipt	8
Article 15 – Rights of a protected holder subject to certain claims	9
Article 16 – Subsequent transfer of a warehouse receipt in control or possession	9
Article 17 – Non-negotiable warehouse receipts	9
PART C. WARRANTIES OF A TRANSFEROR OF A WAREHOUSE RECEIPT	10
Article 18 – Warranties on transfer of a negotiable warehouse receipt	10
Article 19 – Transferor not a guarantor	10
CHAPTER XX – APPLICATION AND TRANSITION OF THIS LAW	10
Article [A] – Entry into force	10
Article [B] – Conflict of Laws	10
Article [C] – Repeal and amendment of other laws	11

PRELIMINARY DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

CHAPTER I – SCOPE AND GENERAL PROVISIONS

Article 1 – Scope of application

1. This Law applies to warehouse receipts.
2. For the purposes of this Law, a warehouse receipt is an electronic record or document issued and signed by a warehouse operator that identifies itself as a warehouse receipt and by which the warehouse operator:
 - (a) acknowledges holding goods described in it on behalf of the holder; and
 - (b) promises to deliver the goods to the holder.

The Working Group is invited to consider whether this definition of a warehouse receipt is compatible with both the single and the dual receipt systems.

Furthermore, the Group is invited to consider whether the following draft provisions of the MLWR in particular are compatible with both systems:

- Art. 6 (Information to be included in a warehouse receipt)
- Chapter III, Part B (Effect of a transfer of a warehouse receipt)

Article 2 – Definitions

For the purposes of this Law:

1. “Depositor” means a person who deposits goods for storage with a warehouse operator.
2. “Electronic record” means information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.
3. “Holder” of a warehouse receipt means:
 - (a) in the case of an electronic negotiable warehouse receipt - the person who has control of the receipt;
 - (b) in the case of a paper negotiable warehouse receipt that is issued to the order of a named person - that person, or the most recent endorsee, if in possession of the receipt;
 - (c) in the case of a paper negotiable warehouse receipt that is issued to bearer - the person in possession of the receipt; and
 - (d) in the case of a non-negotiable warehouse receipt - the person to which delivery of the goods is to be made in accordance with the terms of the receipt.
4. “Negotiable warehouse receipt” means a warehouse receipt that is issued:
 - (a) to the order of a named person; or
 - (b) ~~(in the case of a paper warehouse receipt)~~ to bearer.

The Working Group may wish to consider whether the concept of a bearer warehouse receipts should also apply for EWRs (and if so, what that would mean in a practical sense).

5. “Non-negotiable warehouse receipt” means a warehouse receipt ~~f~~that is issued in favour of a named person~~].~~
6. “Protected holder” means a person that satisfies the requirements of article [13 (a)].
7. “Storage agreement” means an agreement between a warehouse operator and a depositor that sets out the terms on which the warehouse operator agrees to store goods.
8. “Warehouse operator” means a person who is in the business of storing goods for other persons for reward.

Article 2A – Control of an electronic warehouse receipt

A person controls an electronic warehouse receipt for the purposes of this Law if a reliable method is used:

- (a) to establish exclusive control of that electronic transferable record by the person; and
- (b) to identify that person as the person in control.

Article 3 – Party autonomy

1. With the exception of Articles [...], the provisions of this Law may be derogated from or varied by agreement.
2. An agreement referred to in paragraph 1 does not affect the rights or obligations of any person who is not a party to the agreement.

Article 4 – International origin

In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application.

The Working Group may wish to consider whether ‘International Origin’ is the most appropriate heading for this provision.

CHAPTER II – ISSUE OF A WAREHOUSE RECEIPT

Article 5 – Issue of a warehouse receipt

A warehouse operator must issue a warehouse receipt in relation to goods, after taking possession of the goods, if requested by the depositor.

Article 6 – Information to be included in a warehouse receipt

1. A warehouse operator must include the following information in a warehouse receipt:
 - (a) whether it is negotiable or non-negotiable;

- (b) if it is negotiable, the name of the person to whose order the receipt is issued or ~~(in the case of a paper receipt)~~¹ a statement that it is issued to bearer;
- (c) if it is non-negotiable, ~~the named~~ of the person to which in whose favour it is issued~~};~~;
- (d) the ~~identity-name~~ of the depositor;
- (e) the ~~identity-name~~ of the warehouse operator;
- (f) the quantity of the goods;
- (g) the place where the goods are stored;
- (h) a unique identification number for the receipt; and
- (i) the date of issue.

2. An omission or incorrect statement of information required by paragraph (1) does not affect the validity of the warehouse receipt. The warehouse operator is liable for any losses suffered by any person as a result of any such omission or incorrect statement.

3. If a ~~paper~~² negotiable warehouse receipt does not name a person to whose order it is issued, it is issued to bearer.

The Working Group is invited to consider whether this provision is compatible with both the single and the dual receipt systems.

Article 7 – Additional information that can be included in a warehouse receipt

1. A warehouse operator may also include the following information in a warehouse receipt:
- (a) the period of the storage, ~~if it is for a fixed period~~;

The Working Group may wish to consider whether the words 'if it is for a fixed period' are needed.

- (b) the name of the insurer, if any, who has insured the goods;
- (c) the amount of the storage fees if they are a fixed amount or, if they are not a fixed amount, how the fees are calculated;
- (d) the quality of the goods;
- (e) if the goods are fungible, whether the goods may be commingled; or
- (f) any other terms and conditions, as long as they are not contrary to the provisions listed in article 3(1) of this Law and do not unreasonably limit the obligation to deliver.

2. An incorrect statement of information referred to in paragraph (1) does not affect the validity of the warehouse receipt. The warehouse operator is liable for any losses suffered by any person as a result of any such incorrect statement.

3. If a warehouse receipt does not state the period of the storage, the receipt is effective for an indefinite period.

4. If a warehouse receipt covers fungible goods but does not include the quality of the goods, the goods are taken to be of average quality.

¹ See article 2(4)(b).

² See article 2(4)(b).

Article 7A. Special rule for goods in sealed packages and similar situations

1. If goods are deposited in a sealed package or the warehouse operator otherwise has no practicable or commercially reasonable means of verifying [the description of] the goods as provided by the depositor, the warehouse operator may describe the goods and their quantity and quality:
 - (a) in accordance with information provided to it by the depositor; or
 - (b) by a statement to the effect that the package is “said to contain” the described goods, or that the warehouse operator otherwise has no knowledge of the contents or condition of the contents of the package.
2. A warehouse operator who describes goods in accordance with paragraph (1) will not be liable for any losses suffered by any person as a result of doing so.

Article 8 – Amendment of information in a warehouse receipt

1. Subject to paragraph (2), an amendment of a warehouse receipt is ineffective if it is not authorized by the warehouse operator and the holder.
2. If a field in a negotiable warehouse receipt is filled in without authorization, the insertion will ~~still~~ be effective as against a subsequent holder if the holder does not have notice of the lack of authorization.

Article 9 – Loss of a warehouse receipt

1. In the event of the loss or destruction of a warehouse receipt, the holder at the time of loss or destruction may require the warehouse operator to issue a replacement warehouse receipt, by providing:
 - (a) such proof of its entitlement to the warehouse receipt; and
 - (b) such indemnity in relation to the issue of the replacement warehouse receipt and security in support of that indemnity,as the warehouse operator may reasonably require.
2. In the case of an electronic warehouse receipt, “loss” in paragraph (1) means loss of control.
3. If a warehouse operator fails to issue a replacement warehouse receipt pursuant to paragraph (1), the holder at the time of loss or destruction may apply to the Court for an order that the warehouse operator issue a replacement warehouse receipt, including by way of proceedings in the form of [the expeditious proceedings to be specified by the enacting State]. In the case of a lost negotiable warehouse receipt, the applicant must deposit with the Court adequate security to indemnify the warehouse operator against claims by a holder of the lost warehouse receipt.

Article 9A – Replacement of a paper warehouse receipt with an electronic warehouse receipt

1. If the holder of a paper warehouse receipt so requests, a warehouse operator may issue an electronic warehouse receipt to replace the paper warehouse receipt. [The warehouse operator must note the change of medium in the electronic warehouse receipt.]
2. The holder of the paper warehouse receipt must surrender it to the warehouse operator for cancellation, if an electronic warehouse receipt replacing it is issued in accordance with the preceding paragraph.

3. [The replacement of a paper warehouse receipt with an electronic warehouse receipt does not affect the rights and obligations of [the parties]],

4. [A paper warehouse receipt ceases to have any legal effect when it is exchanged in accordance with this provision.]

The Working Group may wish to consider whether this article is needed. The Working Group may also wish to consider, if it takes the view that this article is needed, whether it should also allow conversion from electronic form to paper form (in the interests of even-handedness).

If included, would the provision need to address whether, in a dual system, it is possible to get one of the two documents replaced by electronic form while the other one remains in paper form?

CHAPTER III – TRANSFERS OF WAREHOUSE RECEIPTS

PART A. HOW A WAREHOUSE RECEIPT MAY BE TRANSFERRED

Article 10 – Transfer of a negotiable warehouse receipt

1. An electronic negotiable warehouse receipt may be transferred only by transfer of control.
2. A paper negotiable warehouse receipt may be transferred:
 - (a) by endorsement and delivery, if it is issued or endorsed to the order of the ~~person transferring it~~holder; or
 - (b) by delivery, if:
 - (i) it is issued to bearer; or
 - (ii) it is endorsed in blank or to bearer.
3. If a negotiable warehouse receipt is issued by a warehouse operator to the order of a named person other than the depositor, the issuance and delivery of the receipt to that person by the ~~issuer~~warehouse operator has the same effect as if the receipt had been transferred to that person.

Article 11 – Transfer ~~by assignment of a non-negotiable warehouse receipt~~

Subject to the terms of the warehouse receipt and the storage agreement, a ~~non-negotiable~~holder may also transfer [its rights under] a warehouse receipt ~~may be transferred~~ by means of an assignment ~~that is notified to the issuer~~³.

It has been suggested that this article should apply to negotiable WRs as well as non-negotiable WRs. The Working Group may wish to discuss what the implications of such an assignment of a negotiable WR should be.

The Working Group may wish to consider whether the words 'its rights under' are needed (and whether they are appropriate, if the article is extended to include assignments of negotiable WRs).

³ This is dealt with in article 17.

PART B. ~~RIGHTS-EFFECT~~ OF A TRANSFEREE OF A WAREHOUSE RECEIPT

The Working Group is invited to consider whether the provisions under Part B would cover both single and dual receipts.

Division (I). Rights of a transferee generally

Article 12 – Rights of a transferee generally

A person to whom a warehouse receipt has been transferred acquires such title to the receipt and the goods as the ~~person who transferred the receipt~~transferor was able to convey.

Division (II). Rights of a protected holder of a negotiable warehouse receipt

Article 13 – Transfer of a negotiable receipt to a protected holder

1. A person is a protected holder of a negotiable warehouse receipt if:
 - (a) the receipt has been transferred to the person pursuant to Article 10; and
 - (b) the person acted in good faith and without notice of any claim to the receipt or defence on the part of any person,

unless it is established that the transfer was not in the ordinary course of business or financing.

2. A person does not have notice of a claim to a warehouse receipt for the purposes of paragraph (1)(b) merely because information relating to that claim has been registered in a registry [designated by the enacting state].

Article 14 – Rights of a protected holder of a negotiable warehouse receipt

1. A protected holder of a negotiable warehouse receipt acquires:
 - (a) title to the receipt and to the goods represented by the receipt; and

Most provisions in the draft Law refer to goods being 'covered' by a receipt, rather than 'represented'. The Working Group may wish to consider which expression is preferable, so that it may be used consistently throughout.

~~(b) — title to the goods represented by the receipt; and~~

~~(c)~~(b) the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt.

~~The title and benefit are acquired free of any defences or claims by the warehouse operator or third parties other than defences or claims that arise under the terms of the receipt or under this Law.~~

2. ~~The~~A protected holder acquires the title and benefit ~~acquired by a protected holder~~ under paragraph 1 ~~are not subject to~~free of any claim or defence ~~of the warehouse operator or~~ any other person, other than any claim or defence that arises under the terms of the receipt or under this Law, even if:

- (a) the transfer to the protected holder or any prior transfer constituted a breach of duty by the ~~person transferring the receipt~~ transferor;
- (b) a previous holder of the receipt lost control or possession of the receipt as a result of fraud, duress, theft, conversion, misrepresentation, mistake, accident or similar circumstances; or
- (c) the goods or the receipt had been previously sold, transferred or encumbered to a third person [unless that person ~~acquires~~ took its interest in the goods or the receipt in the ordinary course of business].

The Working Group may wish to consider whether this text should be expanded to refer to 'ordinary course of business **or financing**' (consistent with article 13(1)), or whether that would not be desirable.

3. The title and benefit of a protected holder of a negotiable warehouse receipt are not subject to any retention-of-title or equivalent right [the enacting State to specify the appropriate right granted to sellers] that any person may hold in or in relation to the goods.

Article 15 – Rights of a protected holder subject to certain claims

Despite Article [14], a negotiable warehouse receipt confers no right in goods against a person who ~~before issuance of the receipt~~, had a property right [of a type designated by the enacting State] in the goods before the receipt was issued and who did not:

- (a) deliver or entrust the goods or a receipt covering the goods to the depositor with any actual or apparent authority to ship, store or sell the goods;
- (b) ~~acquiesce in the procurement by the depositor~~ authorise the issue of a receipt covering the goods.

Article 16 – Subsequent transfer of a warehouse receipt by transferor in control or possession

A transfer of a negotiable warehouse receipt by a transferor to a protected holder is taken to have been authorised by a person who had previously purchased or taken a security right over the receipt, or previously purchased or taken a security right over the goods after the receipt had been issued, if the transferor had remained in control or possession of the receipt.

The Working Group may wish to consider whether we still need article 16. It deals only with a competition between a protected holder and a person who takes an interest in the WR, or in the goods covered by the WR, after the WR has been issued. It may be that the protected holder would win that competition anyway under art 14(2)(c). If that is the case, then article 16 could be deleted.

Article 17 – ~~Rights of a transferee of a n~~ Non-negotiable warehouse receipts

1. ~~Either the A-transferor or the transferee or transferor~~ of a non-negotiable warehouse receipt pursuant to Article 11 may notify the ~~issuer-warehouse operator~~ of the transfer. ~~{The issuer-warehouse operator may acknowledge that transfer upon receipt of notification, unless the terms of the receipt or the storage agreement provide otherwise.}~~ If the ~~issuer-warehouse operator~~ acknowledges the transfer, the transferee also acquires the benefit of the warehouse operator's obligation to hold and deliver the goods in accordance with the terms of the receipt and the storage agreement.

2. Prior to notification to the issuer-warehouse operator in accordance with paragraph 1, the title to the goods acquired by the transferee may be defeated by a [judicial levy of an attachment or execution][analogous claim] on the goods by a creditor of the transferor, or by a notification to the issuer-warehouse operator from the transferor or a subsequent transferee from the transferor of a subsequent sale of the goods by the transferor.

PART C. ~~OBLIGATIONS-WARRANTIES~~ OF A TRANSFEROR OF A WAREHOUSE RECEIPT

Article 18 – Warranties on transfer of a negotiable warehouse receipt

1. A ~~person who transfers~~transferor of a negotiable warehouse receipt warrants to the ~~person to whom it transfers the receipt~~transferee, unless agreed otherwise,⁴ that:

- (a) the receipt is authentic;
- (b) it does not know of any fact that would impair the [validity of the receipt] [value of the goods covered by the receipt]; and
- (c) [the transfer is effective with respect to the title to the receipt and the goods it covers.]

2. Despite paragraph 1, a collecting bank or other intermediary, that is entrusted with warehouse receipts on behalf of another, or with collection of a bill of exchange or other claim, warrants by the transfer, transfer of control or delivery of a negotiable warehouse receipt, only, ~~unless agreed otherwise,~~⁵ that it is authorised to do so and is acting in good faith[, even if the collecting bank or other intermediary has acquired or made advances against the claim or bill of exchange to be collected].

Article 19 – Transferor not a guarantor

A ~~person who transfers~~transferor of a warehouse receipt does not guarantee, by virtue of the transfer, the performance by the warehouse operator of any obligations in relation to the receipt.

CHAPTER XX – APPLICATION AND TRANSITION OF THIS LAW

Article [A] – Entry into force

1. This Law enters into force on [date to be specified by the enacting State].
2. This Law applies only to warehouse receipts that are issued after this Law enters into force in accordance with Article [C].

Article [B] – Conflict of Laws

Please refer to the Note on Conflict of Laws Issues, Study LXXXIII – W.G.5 – Doc. 5

⁴ This should be covered by the party autonomy principle in article 3(1).

⁵ Again, this should be covered by the party autonomy rule in article 3(1).

Article [C] – Repeal and amendment of other laws

1. [The laws to be specified by the enacting State] are repealed.
2. [The laws to be specified by the enacting State] are amended as follows [the text of the relevant amendments to be specified by the enacting State].