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

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DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

1. This document contains the draft Model Law on Warehouse Receipts as revised following the fifth session of the Working Group (5 - 7 December 2022). The draft Model Law is composed of seven chapters:

Chapter I	-	Scope and general provisions
Chapter II	-	Issue of a warehouse receipt
Chapter III	-	Transfers and other dealings
Chapter IV	-	Non-negotiable warehouse receipts
Chapter V	-	Rights and obligations of the warehouse operator
[Chapter VI	-	Pledge bond]
Chapter VII	-	Application of this Law

2. The text of the draft Model Law has tracked changes that implement comments and suggestions received by members and observers of the Working Group during the written consultation as well as modifications suggested by the Secretariat. Furthermore, the document sets out remaining issues for consideration by the Working Group at its sixth session on 1 - 3 March 2023.

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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 paper 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.

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 [or endorsed in blank] - the person in possession of the receipt; and

The Working Group may wish to consider whether “or endorsed in blank” should be added in paragraph (c), which would parallel the two situations described in subsection (b) - either issued to the order of a named person or endorsed.

- (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) to bearer.

5. “Non-negotiable warehouse receipt” means a warehouse receipt that is issued in favour of a named person.
6. “Protected holder” means a person that satisfies the requirements of Article 16(1).
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 3 – 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 warehouse receipt by the person; and
- (b) to identify that person as the person in control.

The Working Group may wish to consider whether the MLWR can define what “reliable method” entails so that it is standard.

Article 4 – Party autonomy

1. With the exception of Articles [6...], the provisions of this Law may be derogated from or varied by agreement.

The Working Group is invited to identify the articles that may not be varied or derogated from, especially those relating to purported waivers of liability of the warehouse operator.

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 5 – Interpretation

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

CHAPTER II

ISSUE OF A WAREHOUSE RECEIPT

The Working Group may wish to consider whether to split this Chapter into two sections because Articles 10-12 deal with situations after the warehouse receipt was already issued. Article 13 would be included in Section 1 as it covers a situation at the time of issuance of a receipt.

Article 6 – Obligation to issue 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.

The provision cannot be derogated from or varied by agreement under Article 4(1).

Article 7 – 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 a statement that it is issued to bearer;
 - (c) if it is non-negotiable, the name of the person in whose favour it is issued;
 - (d) the name of the depositor;
 - (e) the name of the warehouse operator;
 - (f) the [description and] quantity of the goods;

The Working Group may wish to consider whether “description” should be added to the “quantity” in paragraph (f). Or is it sufficiently covered by Article 1(2)? Quantity and quality are additional elements that identify the goods, and a receipt would not be a warehouse receipt without any description 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 negotiable warehouse receipt does not name a person to whose order it is issued, it is issued to bearer.

The Working Group may wish to consider whether paragraph 3 should be deleted. It appears to be inconsistent with the definition of negotiable receipt that requires the word “bearer”. Receipts originally issued in blank are prone to mischief and should not be recognized as negotiable documents.

The Working Group may also wish to consider whether there should be a paragraph providing a default rule that “If a negotiable warehouse receipt does not indicate whether it is negotiable or non-negotiable, it is negotiable.”

The Working Group may wish to consider whether the Model Law should clarify what happens if the warehouse receipt indicates that it is “non-negotiable” but does not name the person in whose favour it is issued.

Article 8 – 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;
 - (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 [grade or] quality of the goods;

The Working Group is invited to consider adding the grade here, as suggested in the text, to reflect the typical wording in warehouse receipts.

- (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 4(1) of this Law [or ~~and do not~~ unreasonably limit the obligation of the warehouse operator to deliver the goods to the holder].

The Working Group is invited to consider whether the bracketed text is needed. If an obligation to deliver is a mandatory provision, this language would not be needed as any term in the receipt that provides otherwise would not be effective by virtue of Article 4(1).

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.

The Working Group may wish to consider whether Article 8 (1)(a) and (3) should be moved to Article 7, as paragraph 3 in effect seems to make information about the period of storage a required information.

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

Article 9 – Goods in sealed packages and similar situations

1. If the warehouse operator has no practicable or commercially reasonable means of examining the goods (for example because they are in sealed packages), 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) in the case of goods in a sealed package, 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~~.

The Working Group may wish to consider whether “unless the warehouse operator knew such description to be false at the time of issuance of the receipt” should be added at the end of paragraph 2. This is to clarify that if the receipt describes the goods as apples, but the operator has knowledge that sealed boxes contain rocks rather than apples, the issuer cannot escape liability by disclaiming knowledge.

Article 10 – 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 be effective as against the warehouse operator if a subsequent holder ~~if the holder~~ has no knowledge of the lack of authorization at the time that person becomes the holder.

The Working Group may wish to consider whether the clause “filled in without authorization” would be opening up an avenue for mischief by a warehouse operator to change/insert new details before transfer of a receipt to a new holder.

The Working Group may wish to consider whether the current text ensure that a ‘subsequent holder’ without knowledge of the insert can enforce the receipt as against the operator.

Article 11 – Loss or destruction 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.

The Working Group may wish to consider whether this provision does not open the possibility that a holder who has been deprived of control by fraud etc. may apply for reinstatement to the warehouse operator? What impact might this have on subsequent transferees? Should the “loss or destruction” scenario be limited to paper and not loss of control, unless by loss of control we are referring to a breakdown of the electronic platform, in which case this should be described?

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 12 – Change of medium of a warehouse receipt

1. If the holder of a warehouse receipt so requests, a warehouse operator may change the medium of the warehouse receipt from paper to electronic or from electronic to paper.
2. At the time of the change of medium, the warehouse operator must ensure that the warehouse receipt can no longer be used in its previous medium.
3. The change of medium does not affect the rights and obligations of the parties.

Article 13 – Representation by the depositor

The depositor represents to the warehouse operator, at the time of deposit, that:

- (a) the depositor has the authority to deposit the goods in the name of the depositor [or such other person named as the depositor in the receipt]; and

The Working Group may wish to consider inserting “in the name of the depositor [or such other person named as the depositor in the receipt]”, because the person depositing the goods will likely be a transport company or freight forwarder or broker or seller acting on behalf of the owner in which case this should be disclosed.

- (b) the goods are free of any rights or claims of third parties.

CHAPTER III

TRANSFERS AND OTHER DEALINGS

The Working Group is invited to consider changing the title of the chapter to “Transfers and other dealings in negotiable warehouse receipts” and amend/clarify the other section and article headings by adding the term “negotiable warehouse receipts”. (Part A: “How a negotiable warehouse receipt may be transferred”, and Part B: “Effect of a transfer of a negotiable warehouse receipt”). The Working Group had decided at WG5 that Chapter III covers negotiable warehouse receipts only, leaving non-negotiable warehouse receipts to be covered in Chapter IV.

Are there nevertheless any provisions that should apply to non-negotiable warehouse receipts as well? For example, Article 15 on the rights of a transferee, and Article 19 on representations by the transferor of a warehouse receipt, could sensibly apply to non-negotiable warehouse receipts as well. This is possibly the case for Articles 20 and 21 as well.

PART A. HOW A WAREHOUSE RECEIPT MAY BE TRANSFERRED

Article 14 – Transfer of a negotiable warehouse receipt

1. 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; or
 - (b) by delivery, if:
 - (i) it is issued to bearer; or
 - (ii) it is endorsed in blank or to bearer.

2. An electronic negotiable warehouse receipt may be transferred by ~~transfer~~change of control.

The UNIDROIT digital assets principles refer to “change of control” which describes the mechanism more appropriately. “Transfer of control” implies some legal effect while this provision aims to capture the mechanics, similar to delivery in the preceding paragraphs.

PART B. EFFECT OF A TRANSFER OF A WAREHOUSE RECEIPT

Article 15 – Rights of a transferee generally

A person to whom a warehouse receipt has been transferred acquires:

- (a) such rights to the receipt and the goods as the transferor was able to convey; and
- (b) the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt.

Article 16 – Protected holder of a negotiable warehouse receipt

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 14;
- (b) the person acted in good faith and without knowledge of any claim to the receipt [or the goods covered thereby,] or defence on the part of any person; and

The Working Group may wish to consider whether “or the goods covered thereby” should be added in paragraph (b) since if the purchaser knows the goods are stolen s/he is not acting in good faith. This would expand the type of knowledge that could defeat the protected holder protection.

- (c) the transfer was in the ordinary course of business or financing.

2. [A person does not have knowledge of a claim to a warehouse receipt [or the goods covered thereby] for the purposes of paragraph (1)(b) merely because information relating to that claim has been registered in [a registry established pursuant to a secured transactions law as specified by the enacting State ~~designated by the enacting State~~].

If the Working Group agrees to add the reference to “goods” in the preceding paragraph, the text of this paragraph should be conformed accordingly.

3. If a negotiable warehouse receipt is issued by a warehouse operator to the order of a named person other than the depositor, the issue and delivery of the receipt to that person by the warehouse operator has the same effect, for the purposes of determining whether that person is a protected holder, as if the receipt had been transferred to that person pursuant to Article 14.

The Working Group may wish to consider whether the term “delivery of the receipt” limits the application of this paragraph to paper receipts. The paragraph should equally apply to electronic receipts.

Article 17 – Rights of a protected holder of a negotiable warehouse receipt

1. Notwithstanding Article 15, a protected holder of a negotiable warehouse receipt acquires title to the receipt and the goods covered by the receipt, and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, 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.

2. Paragraph 1 applies even if:

- (a) the transfer to the protected holder or any prior transfer constituted a breach of duty by the 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.

3. The title and benefit of a protected holder of a negotiable warehouse receipt are not subject to [any retention-of-title, security or equivalent right as specified by the enacting State] that any person may have in or in relation to the goods.

4. The title and benefit of a protected holder of a negotiable warehouse receipt are not subject to any right pursuant to a judgment against any person not having lawful possession of the

~~warehouse receipt other than the protected holder. The warehouse operator must not deliver the goods to a person claiming pursuant to such a judgment.~~

The Working Group may wish to consider whether to insert “not having lawful possession of the warehouse receipt” in lieu of “other than the protected holder”, as suggested in the text.

The Working Group may wish to consider deleting the last sentence as suggested in the text.

PART C. SECURITY RIGHTS

Article 18 – Third party effectiveness of a security right

A security right in a negotiable warehouse receipt may be made effective against third parties by:

- (a) [registration in a registry established pursuant to a secured transactions law as specified by the enacting State];
- (b) in the case of an electronic negotiable warehouse receipt, the secured creditor taking control of the receipt in accordance with Article 3; or
- (c) in the case of a paper negotiable warehouse receipt, the secured creditor taking possession of the receipt.

PART D. REPRESENTATIONS AND GUARANTEES BY A TRANSFEROR OF A WAREHOUSE RECEIPT

Article 19 – Representations by a transferor of a warehouse receipt

A transferor of a warehouse receipt represents to the transferee that:

- (a) the receipt is authentic;
- (b) it does not know of any fact that would impair the validity of the receipt or the 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.

The Working Group may wish to consider the consequence if the representations in Articles 19 and 20 are breached. Should the consequence be determined by the applicable law generally? The same consideration could apply to Article 13 on representations by the depositor.

Article 20 – Limited representation by intermediaries

Notwithstanding Article 19, an intermediary that is entrusted with warehouse receipts on behalf of another or with collection of a negotiable instrument or other claim, represents by the transfer of a warehouse receipt only that it is authorized to do so.

Article 21 – Transferor not a guarantor

A person who transfers 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 IV
NON-NEGOTIABLE WAREHOUSE RECEIPTS

Article 22 – Transfer by assignment

Subject to the terms of the warehouse receipt and the storage agreement, a holder may transfer its rights under a non-negotiable warehouse receipt by means of an assignment.

The Working Group may wish to consider whether “written” assignment should be inserted in Article 22 to require some form of written evidence of the assignment. Although that would not seem to be necessary as this is a reference to the legal mechanism that transfers rights. The formalities of assignment, including writing are a matter of general law.

Article 23 – Notice to warehouse operator

1. Either the assignor or the assignee of a non-negotiable warehouse receipt [pursuant to Article 22] may notify the warehouse operator of the assignment.

2. If the warehouse operator acknowledges the assignment, the assignee 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.

CHAPTER V

RIGHTS AND OBLIGATIONS OF THE WAREHOUSE OPERATOR

Article 24 – Application of this Chapter

The obligations imposed by this Chapter on a warehouse operator apply if a warehouse receipt has been issued, even if:

- (a) the receipt does not comply with the requirements of this Law; or
- (b) the warehouse operator is in violation of [applicable regulatory requirements to be specified by the enacting State].

The Working Group may wish to consider whether “to be specified by the enacting State” should be added at the end of paragraph (b).

Article 25 – Duty of care

The warehouse operator must store, safekeep and maintain the quality and quantity of the goods [as stated in the warehouse receipt].

The Working Group may wish to consider whether “safekeep” adds anything to the combination of “store” and “maintain the quality and quantity”? Note that Article 27(1)(b) also refers to “preservation”.

Should this provision require the operator to act in a commercially reasonable manner? Should it include a reference to the storage agreement? Without some qualifications this provision could render warehouse operators uninsurable for professional liability.

Article 26 – Duty to keep goods separate

1. Subject to paragraph 2, the warehouse operator must keep the goods separate so as to permit identification [and delivery of the goods] at any time.

The Working Group may wish to consider whether these words in squared brackets are needed. Delivery at any time is subject to satisfying certain conditions set out in Article 28.

2. The warehouse operator may commingle fungible goods ~~may be commingled~~ into a mass of goods of the same type and quality, if so stated in the warehouse receipt.

Article 27 – Lien of the warehouse operator

- 1. The warehouse operator has a lien on the goods [and in any proceeds] for:
 - (a) charges for storage of the goods;
 - (b) [unexpected] expenses necessary for the preservation of the goods;

The Working Group may wish to consider whether the provision should put limits on what the unexpected expenses will entail to protect the holder of the warehouse receipt against high costs/arbitrary expenses, as the warehouse operator should be able to factor in the costs of preserving goods as stated in the warehouse receipt.

- (c) expenses reasonably incurred in the sale of the goods in accordance with this Law; and
 - (d) similar charges or expenses owed by the holder in relation to other goods held by the warehouse operator, if so ~~provided~~ stated in the warehouse receipt.
2. Subject to paragraph 3, the warehouse operator's lien is effective against third parties.
 3. As against~~In the case of~~ a protected holder the lien is limited to:
 - (a) specified in the receipt; or
 - (b) if no charges are so specified, a reasonable charge for storage subsequent to the date of issue of the~~a~~ receipt.
 4. The warehouse operator may enforce its lien pursuant to [relevant other law as specified by the enacting State] ~~by [enacting State to insert cross-reference to relevant other law]~~.

The Working Group may wish to consider whether two separate paragraphs are needed to address judicial and extra-judicial enforcement. The reference to other law would seem to be to the secured transactions law and may make sense only if the secured transactions law permits extra-judicial enforcement.

Article 28 – Obligation of warehouse operator to deliver

1. Except as provided in Article 31, the warehouse operator must deliver the goods to the holder if ~~that person~~ the holder:
 - (a) surrenders possession or control of the warehouse receipt ~~covering the goods for cancellation~~; and
 - (b) satisfies the amount secured by the warehouse operator's lien under Article 27.
2. Upon delivery of the goods, the warehouse operator must cancel the warehouse receipt.

Article 29 – Partial delivery

1. Except as provided in Article 31, the warehouse operator must deliver part of the goods to the holder if ~~that person~~ the holder:
 - (a) surrenders possession or control of the warehouse receipt ~~covering the goods for indication of partial delivery~~; and
 - (b) satisfies a corresponding proportion of the amount secured by the warehouse operator's lien under Article 27.
2. Upon partial delivery of the goods, the warehouse operator must note the partial delivery on the warehouse receipt and return possession or control of the receipt to the holder.

Article 30 – Split warehouse receipt

If so requested by the holder of a warehouse receipt, a warehouse operator may split the warehouse receipt into two or more warehouse receipts that cover in total the goods that were covered by the original warehouse receipt, upon surrender of possession or control of the original warehouse receipt.

Article 31 – Excuses from delivery obligation

The warehouse operator is excused from delivering the goods if and to the extent it establishes any of the following:

- (a) destruction or loss of the goods for which the warehouse operator is not liable;
- (b) that it has previously sold the goods in enforcement of its lien pursuant to Article 27(4);
- (c) that it has sold or otherwise disposed of the goods pursuant to Article 32(2) or (4) ~~terminated its storage of the goods pursuant to Article 32(3),(4);~~ or
- (d) any other lawful excuse.

The Working Group may wish to consider whether it is clear what paragraph (d) means, and provide some examples in the Guide.

Article 32 – Termination of storage at warehouse operator's option

The Working Group may wish to consider whether the reference to "option" in the heading is clear.

1. The warehouse operator, by giving notice to all persons known to the warehouse operator to claim an interest in the goods ~~the known holder, and any other person known to claim an interest in the goods,~~ may demand payment of the storage fees and removal of the goods:

Revised formulation to be consistent with paragraph 4, below.

- (a) at the end of the storage period specified in the warehouse receipt; or
 - (b) if a period is not specified in the warehouse receipt, within [a short period to be specified by the enacting State].
2. If the goods are not removed before the date contemplated by paragraph (1) ~~specified in the notice,~~ the warehouse operator may sell them pursuant to [Article 27(4)] [relevant other law as specified by the enacting State] ~~enacting State to specify the applicable law].~~

The Working Group is invited to consider reformulating paragraph (2) as follows:

"If the goods are not removed before the end of the storage period specified in the warehouse receipt or before the date specified in the notice under (b) of the preceding paragraph, the warehouse operator may sell them pursuant to"

3. If the warehouse operator believes that the goods will ~~[deteriorate or]~~ decline in value to less than the amount that is secured by its lien before the end of the time within which it would otherwise be entitled to sell the goods under paragraph (2), the warehouse may specify a reasonable ~~shorter~~ period of time that is shorter than the period that would otherwise apply ~~in the notice given under paragraph 1.~~

It is suggested to delete “deteriorate or” on the basis that “decline in value” will cover that situation.

4. If, as a result of a quality or condition of the goods of which the warehouse operator did not have knowledge at the time of deposit, the goods are a hazard, the warehouse operator may sell the goods at public [or private] sale without advertisement on reasonable notification to all persons known to the warehouse operator to claim an interest in the goods. If the warehouse operator, after reasonable efforts, is unable to sell the goods, it may dispose of them in any lawful manner.

The Working Group may wish to consider whether “private sale” and “without advertisement” are appropriate in this context.

[CHAPTER VI PLEDGE BOND]¹

Article 33 – Pledge bond

For the purposes of this Law, a pledge bond is an electronic record or paper document [issued and signed by the warehouse operator] that identifies itself as a pledge bond and satisfies the requirements of Articles 34 and 37.

A pledge bond is a negotiable instrument itself under which the warehouse operator is obligated to treat the stored goods as collateral for a prospective pledgee. Therefore, it must be “signed” by the warehouse operator at the time it issues the dual receipt.

Therefore, the Working Group may wish to consider the proposed addition in squared brackets in the text, which is adopted from Article 1(2).

The Working Group may wish to consider whether it is possible to further refine draft Articles 33 and 34 with respect to the electronic form of the pledge bond. The concern is that the information relating to the pledge bond may not be contained in a separate electronic record associated with the record relating to the warehouse receipt, but in the same composite electronic record. Maybe the issue could be further discussed in light of the actual practice in managing electronic pledge bonds. One option could be that the information relating to the pledge bond will be a field of the EWR, which, in practice, may reduce the differences between dual and single warehouse receipt systems.

Article 34 – Form of pledge bond

The warehouse operator, [if requested by the depositor or current holder and subject to the terms of the storage agreement] at the time it issues a negotiable warehouse receipt, must attach to the receipt (if it is in paper form), or associate with the receipt (if it is in electronic form) a pledge bond that contains the same [information / fields to provide information] as in the warehouse receipt.

The Working Group may wish to consider the issuance of a pledge bond should be allowed after issuance of the related receipt as well.

Article 35 – ~~Issue and~~ [First transfer and] effect of a pledge bond

The Working Group may wish to consider whether “issue” is the right word. The pledge bond is already issued by the warehouse operator. A holder who detaches and pledges the pledge bond is “transferring” the pledge bond by way of endorsement and delivery. Therefore, it is suggested to consider changing the title of Article 35 to “Effect of a pledge bond” or “First transfer and effect of a pledge bond”.

1. If the holder of the warehouse receipt:
 - (a) completes the form of the pledge bond ~~is completed~~ in accordance with Article 37; and

¹ Inclusion of this Chapter is suggested only for enacting States that seek to implement a system of dual warehouse receipts consisting of a warehouse receipt and a pledge bond.

- (b) issues the pledge bond by providing ~~a person takes~~ possession or control (as appropriate) of the completed pledge bond to another person,

the pledge bond grants the person [a possessory security right] in the goods covered by the warehouse receipt.

2. If a pledge bond has been issued in accordance with paragraph (1):

- (a) the rights of the holder (including a protected holder) of the warehouse receipt to the goods are subject to the rights of the holder of the pledge bond; and

The Working Group may wish to consider whether, for emphasis, paragraph (a) should refer to the “holder (including a protected holder)”. The Working Group may wish to consider whether a State would need to modify Article 17(3) as the rights of the protected holder would be subject to the pledge bond.

The Working Group may wish to consider whether a definition of holder of a pledge bond should be added, as the current draft MLWR defines “holder” in relation to warehouse receipts only.

The Working Group may wish to consider whether the Model Law should state that the rights of the holder of the pledge bond are subject to the rights of the warehouse operator under Articles 27 and 32.

- (b) the warehouse operator may not deliver the goods to the holder of the warehouse receipt unless ~~that~~ possession or control of the pledge bond is also surrendered.

3. The first holder of the warehouse receipt must notify the warehouse operator that the pledge bond has been issued.

The Working Group may wish to consider whether it is necessarily the “first holder”. What if it is only a later holder who wants to use the goods as collateral? And what happens if the holder does not give the notice? Could this be changed to, for example, “the holder completing the pledge bond”, “first transferor” or “first endorser”?

The Working Group may wish to consider whether notification to the warehouse operator is necessary. The warehouse operator knows that it issued a dual receipt, and if a holder presents only the warehouse receipt without the pledge bond to claim delivery of the goods, the warehouse operator can refuse (under Article 35(2)(b)).

On the other hand, a notation should be made on the warehouse receipt that the pledge bond has been pledged, in order to alert subsequent holders of the separated warehouse receipt. Please see comments on Article 37.

What if the goods are released before the bond is notified?

Article 36 – Control of an electronic pledge bond

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

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

Article 36 would replace paragraphs (b) of Article 18.

Article 37 – Completion of a pledge bond

Before ~~the person takes possession or control of the~~ the holder of a warehouse receipt issues a pledge bond under Article 35, the bond must be:

- (a) completed with the following information:
 - (i) the name of the holder [of the pledge bond];
 - (ii) the amount secured by the pledge bond;

The Working Group may wish to consider whether a new subsection (iii) “the interest” should be added. Might the warehouse operator otherwise not know the total amount that is secured by the pledge bond?

Maybe (ii) is intended to also cover interest, but the amount of interest will change as time goes by, so it would be better to separately itemize interest.

- (iii) the due date for payment of the amount secured by the pledge bond; and
 - (iv) the date of issue of the pledge bond; and
- (b) signed by the holder of the warehouse receipt [and acknowledged by the warehouse operator].

The Working Group is invited to consider whether, in addition to paragraphs (a) and (b), a notation should be made on the warehouse receipt that the pledge bond has been detached, and whether the information in paragraph (a) should also be noted on the warehouse receipt.

Such notation should be necessary to achieve third-party effectiveness of the pledge, because otherwise, subsequent holders of the warehouse receipt will not know that the goods covered by the warehouse receipt are actually encumbered. (Granted, protected holders will have protection, so to put it another way, such notation is necessary for the holder of the pledge bond to have priority over protected holders of the warehouse receipt.) Requiring a notation as a condition of third-party effectiveness would modify the requirements set out in Article 18.

The Working Group is invited to consider whether the “holder’s” name should be required in paragraph (a). The holder is in possession of the pledge bond. Moreover, if the pledge bond is transferred, the name of the holder will change.

Or, could it be that this “holder” (and the “holder” in paragraph (b)) is meant to be the holder who detaches the pledge bond? In other words, is this “holder” meant to be the pledgor? If that is the case, the term may be changed to “pledgor” or “debtor”, “first transferor”, or “first endorser”.

The Working Group may wish to consider whether to add “acknowledged by the warehouse operator” at the end of paragraph (b).

Article 38 – Amendment of information in a pledge bond

1. Subject to paragraph (2), an amendment of a pledge bond is ineffective if it is not authorized by the holder of the warehouse receipt.
2. If a field in a pledge bond is filled in without authorization, the insertion will be effective as against a subsequent holder of the pledge bond if the holder has no knowledge of the lack of authorization at the time that person becomes the holder.

The Working Group is invited to consider whether Article 38 needed. As a practical matter, does this happen?

Article 39 – Transfer of a pledge bond

1. A pledge bond may be transferred together with the warehouse receipt, or separately.
2. A paper pledge bond may be transferred by endorsement and delivery.

Question to the Working Group: Can the pledge bond be made to bearer? What happens if it is?

3. An electronic pledge bond may be transferred by transfer of control.
4. ~~The first holder of the pledge bond must notify the issuance of the pledge bond to the warehouse operator.~~

It is suggested to delete paragraph 4, because it is covered by Art 35(3).

Article 40 – Termination of a pledge bond

1. The holder of the warehouse receipt may pay the amount secured by the pledge bond whether or not the amount is yet due.
2. If there has been default in payment of the amount secured by a pledge bond, the holder of the pledge bond can enforce its security right over the goods pursuant to [relevant other law as specified by the enacting State] ~~in accordance with [enacting State to specify the applicable law].~~

CHAPTER VII**APPLICATION OF THIS LAW****Article 41 – Entry into force**

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

Article 42 – Repeal and amendment of other laws

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