



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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**UNIDROIT Working Group on a Model Law on  
Warehouse Receipts**

***Sixth session (hybrid)***  
**Rome, 1 – 3 March 2023**

UNIDROIT 2023  
Study LXXXIII – W.G.6 – Doc. 3  
English only  
March 2023

**SUMMARY REPORT**

**OF THE SIXTH SESSION**  
**(1 – 3 March 2023)**

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1. The sixth session of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (the Working Group) took place in a hybrid format between 1 and 3 March 2023. The Working Group was attended by 29 participants, comprising Working Group members, observers, including representatives of international and regional organisations as well as the private and public sector, and members of the UNIDROIT Secretariat (List of participants available in Annexe I).

**Item 1: Opening of the session by the Chair**

2. *The Secretary-General* welcomed the attendees to the sixth meeting of the Working Group and thanked them for participating. *The Chair* joined in welcoming the participants and opened the session.

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

3. *The Chair* introduced the annotated draft agenda and the organisation of the session. *The Working Group adopted the draft agenda (Study LXXXIII – W.G.6 – Doc. 1, available in Annexe II) and agreed with the organisation of the session as proposed.*

**Item 3: Consideration of the revised Draft Model Law on Warehouse Receipts together with comments received during the consultation ([Study LXXXIII – W.G.6 – Doc. 2](#))**

4. *The Chair* drew the Working Group’s attention to Item 3 on the agenda and introduced Doc. 2, which contained the complete draft of the Model Law on Warehouse Receipts (MLWR) as revised following the fifth session of the Working Group and the subsequent written consultation. The document set out remaining issues for consideration and potential adoption by the Working Group.

**(a) Chapter I: Scope and general provisions**

Article 2, Definitions

5. *The Chair* drew the Working Group’s attention to Article 2, “Definitions”, and the question raised in the draft MLWR on whether the definition of a “holder” in Article 2, paragraph 3(c) should include the additional phrase “or endorsed in blank” after “issued to bearer”. The participants agreed it was a sensible proposal that filled in a lacuna and was also consistent with Article 14, paragraph 1(b), which contained the same concept. *The Working Group agreed to include the additional phrase.*

Article 3, Control of an electronic warehouse receipt

6. *The Chair* raised the issue of whether the Model Law should define what was meant by a “reliable” method used to establish exclusive control of an electronic warehouse receipt. The participants noted that the concept of “reliability” was well-established in other uniform law instruments, and that generally guidance as to what “reliable methods” consist of would be given in the Guide to Enactment. *The Working Group agreed that it would be sufficient to provide appropriate guidance in the Guide to Enactment to the Model Law.*

Article 4, Party autonomy

7. *The Chair* opened the floor for discussion on Article 4, paragraph 1. A few participants noted that the scope for party autonomy was limited in the context of the MLWR, observing that it was limited in the context of laws concerning warehouse receipts, and on negotiable instruments in

general. This was because the imposition of mandatory rules limited the scope of investigation needed by downstream holders and ensured the negotiability and easy circulation of negotiable instruments. Therefore, it was proposed to list very few Articles that could be derogated from in Article 4. Conversely, other participants noted that Article 4 was standard-form wording in many uniform law instruments, and that there were practical benefits to proposing a list of Articles which could not be contracted out of upfront.

8. Various alternative formulations for Article 4 were raised during the discussion, including to provide that only Chapter V, “Rights and obligations of the Warehouse Operator”, could be contracted out of, or to provide that the provisions of the MLWR were generally not amenable to contracting out except for where specified in particular Articles. One participant pointed out that party autonomy had another dimension, drawing a distinction between derogation and variation, noting that some fundamental obligations might be capable of variation, but could not be derogated from entirely.

9. *The Working Group agreed to refer Article 4, paragraph 1 to the Drafting Committee for further consideration.*

10. The participants then discussed Article 4, paragraph 2. One participant proposed to delete it to ensure that any agreements between the depositor and warehouse operator bound subsequent transferees of the warehouse receipt. In response, other participants pointed out that this situation was not addressed by the paragraph and that it was better discussed in the context of transfers. *Ultimately, the Working Group agreed to also refer Article 4, paragraph 2 to the Drafting Committee for further consideration.*

## **(b) Chapter II: Issue of a Warehouse Receipt**

### Structure of Chapter II

11. *The Chair* invited the Working Group to discuss whether Chapter II should be split into two sections, one dealing with the issuance of the warehouse receipt, and another dealing with matters occurring thereafter. *The Working Group agreed to refer the issue to the Drafting Committee to ascertain whether a more logical and coherent structure for Chapter II could be achieved.*

### Article 6, Obligation to issue a warehouse receipt

12. One participant noted that warehouse operators might not wish to issue warehouse receipts as a matter of practice. Article 6, currently drafted in mandatory form, implied a distinction between a mere “goods received note” (a record of receipt of goods only as between the depositor and the warehouse operator) and a warehouse receipt (which could be further transferred to third parties). It was noted that warehouse operators might prefer to issue only the former because the latter imposed more complex obligations, in particular towards third parties.

13. However, other participants noted that the starting point for the entire MLWR project had been that, if one wished to run a formal warehouse business, then warehouse receipts would need to be issued. The mandatory wording of Article 6 had been a conscious choice by the Working Group to achieve the policy objectives of the MLWR, i.e. to stimulate the growth in the use of warehouse receipts.

14. *The Working Group agreed to keep the current wording of Article 6.*

15. Notwithstanding the above, suggestions were made to address the concerns of enacting States whose warehouse operators currently did not issue warehouse receipts in practice. First, a State could choose simply not to enact the MLWR. Second, it could be clarified, either in the MLWR text or in the Guide to Enactment, that the issuance of a goods receipt note in lieu of a warehouse

receipt had no impact on the validity of any arrangements covering the deposit of goods. Third, the Guide to Enactment could include an explicit recognition of the policy issue raised by Article 6, and clarify that the MLWR was directed mainly at public warehouses (which were usually subject to State regulation) and not informal, privately operated warehouses. Ultimately, it was proposed to include a second paragraph in Article 6 clarifying that the lack of issuance of a warehouse receipt by the warehouse operator did not affect the existence or validity of the contract of deposit, i.e. the storage agreement. *The Working Group agreed on including the suggested paragraph.*

Article 7, Information to be included in a warehouse receipt

16. *The Chair* invited the Working Group to discuss whether the word “description” should be added to Article 7, paragraph 1(f), in addition to “quantity”, as proposed in the draft MLWR. Several participants deemed “description” broad enough to encompass quantity and quality, whereas others considered the explicit requirement for more essential information beneficial. However, it was pointed out that the range of essential information differed depending on the type of goods, e.g. for commodities as opposed to manufactured goods.

17. The Working Group also discussed whether the addition of “description” was necessary for the purpose of triggering Article 7, paragraph 2. It was argued that if “description” was not included in Article 7, paragraph 1, a warehouse receipt which lacked a “description” might be invalid, whereas others pointed out that under Article 1, a warehouse receipt without a description of goods did not even fall within the definition of a warehouse receipt for the purposes of the MLWR.

18. After some discussion, noting that the word “type” was standard industry language, *the Working Group agreed that Article 7, paragraph 1(f) should use the phrase “the type and quantity of the goods”.*

19. Moving on to Article 7, paragraph 2, one participant noted that it was intended to apply to the situation where information was not altogether missing, but was rather wrong. Several participants proposed to change the phrase “omission or incorrect statement” to “incomplete or incorrect statement” to address this distinction.

20. *The Chair* then invited a discussion on whether Article 7, paragraph 3 (“If a negotiable warehouse receipt does not name a person to whose order it is issued, it is issued to bearer”) should be deleted. Participants noted that it appeared to address the situation of a pre-printed form requiring the name of a person to whose order it was issued that is left blank, possibly through inadvertence. One participant observed that this situation would not arise for electronic warehouse receipts, whereas another noted that this was not a common occurrence in practice. It was also noted that the principle underpinning Article 7, paragraph 3 derived from the rules applying to negotiable instruments and was intended to remove doubts as to validity and facilitate circulation of such instruments. *The Working Group agreed not to delete Article 7, paragraph 3.*

21. Continuing with Article 7, the Working Group then considered the suggestion in the draft MLWR text that there should be a paragraph providing a default rule in favour of negotiability of warehouse receipts. A discussion ensued in which the participants debated whether parties should be allowed to determine the negotiability of a warehouse receipt simply by a statement on the face of the document. It was however concluded that this issue was not the one addressed by the proposed draft text. *The Working Group agreed to adopt the text proposed in Doc. 2 with one modification as follows: “if a ~~negotiable~~ warehouse receipt does not indicate whether it is negotiable or non-negotiable, it is negotiable”.*

22. Finally, the Working Group discussed the proposal in the draft MLWR to invite clarification of what happened if the warehouse receipt indicated that it was non-negotiable but did not name the person in whose favour it was issued. The Working Group noted that this was a hypothetical scenario

unlikely to arise in practice. *The Working Group agreed not to provide such clarification in the Model Law.*

Article 8, Additional information that can be included in a warehouse receipt

23. *The Chair* next invited the Working Group to consider Article 8, paragraph 1(d), and to consider whether the proposal in the draft MLWR to add the word “grade” was necessary. Participants noted that Article 8 did not present an exhaustive list. *The Working Group agreed that it was unnecessary to add “grade”.*

24. Turning next to Article 8, paragraph 1(f), the Working Group considered the wording of the draft provision, which included a specific reference to terms and conditions “as long as they are not contrary to the provisions listed in Article 4(1) of this Law”, to require reconsideration. It was noted that the provisions in Article 4(1), being mandatory in nature, already applied to the entire MLWR. One participant noted that, as a matter of drafting, either no provision in the MLWR should refer to Article 4(1), or all pertinent provisions should do so. Otherwise, there would be undesirable uncertainties as to the legislative intent of referring to Article 4(1) in certain provisions but not others. *The Working Group agreed that Article 8 should be redrafted such that the chapeau would read “A warehouse operator may also include any other information in a warehouse receipt, such as:”, and to delete Article 8, paragraph 1(f) altogether.*

25. The participants next discussed a proposal to move Article 8, paragraphs 1(a) and 3 to Article 7, given the informational importance of the period of storage. Some participants noted the possibility of indefinite storage periods that might make how any such requirement could be satisfied in practice unclear, although other participants observed that indefinite obligations were generally unenforceable under civil law systems. *The Working Group agreed to move Article 8, paragraph 1(a) to Article 7, and further invited the Drafting Committee to reformulate the wording to address the situation of indefinite periods of storage.*

26. As to Article 8, paragraph 3, some participants noted that the intention underpinning this provision was to provide for a default rule in the event that the warehouse receipt failed to state the period of storage. Other participants queried the necessity for this provision. It was pointed out that the default rules were in fact included in Articles 31 and 32 (providing for warehouse operator’s right to terminate the storage and sell the goods upon default). One participant suggested that Article 8, paragraph 3 might in fact contradict Articles 31 and 32 insofar as it gave the impression that the warehouse receipt would be valid indefinitely. It was also pointed out that the MLWR did not provide for default rules if other mandatory information in Article 7 was not included in the warehouse receipt, and that no exception should be made for the period of storage. *The Working Group agreed to delete Article 8, paragraph 3.*

27. Turning to Article 8, paragraph 4, *the Working Group agreed to adopt the proposed change of language in the draft MLWR, i.e. that the warehouse receipt did not “state” (instead of “include”) the quality of the goods.*

Article 9, Goods in sealed packages and similar situations

28. *The Chair* then opened the floor for discussion on whether an exception to Article 9, paragraph 2 should be made to the effect that the warehouse operator could not rely on such a provision if it had knowledge that the description was false at the time of issuing the warehouse receipt. Several participants supported the inclusion of the exception. One participant suggested that wording similar to that used in the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules), i.e. “knew or had reasonable grounds to believe”, could be considered for the MLWR.

29. The Working Group then discussed the possibility of redrafting Article 9 in more general terms, given that the principle in Article 9, paragraph 1(b) was of broader application than merely to the situation of goods in a sealed package. For example, there could be cases where a warehouse operator was asked to store goods which it did not have the capability or expertise to assess, and therefore ought to rely on the information provided by the depositor.

30. Several participants proposed different approaches to redrafting. One participant suggested the following:

"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~~ and*

(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,*

*provided that the warehouse operator did not know or have reasonable grounds to believe that the description was incorrect.*

31. A further drafting suggestion was that Article 9, paragraph 1(b) (as modified above) should use the conjunction "and" instead of "or".

32. A different suggestion was to combine and modify Article 9, paragraphs 1(a) and 1(b) altogether into the composite phrase "*in accordance with information provided to it by the depositor, and a statement that the warehouse operator otherwise has no knowledge of the contents or condition of the goods*".

33. A further comment was that the concept of "examining" in Article 9, paragraph 1 was not broad enough. *The Chair* proposed the word "assessment" or "assessing".

34. *The Working Group agreed to refer Article 9, paragraph 1 to the Drafting Committee for reconsideration and redrafting as necessary.*

35. Turning next to Article 9, paragraph 2, different views were expressed as to whether the proposed change in the draft MLWR to delete the phrase "of doing so" was necessary. *The Working Group ultimately decided this was a language issue to be referred to the Drafting Committee for consideration.*

#### *Article 10, Amendment of information in a warehouse receipt*

36. *The Chair* then invited the Working Group to discuss Article 10. The participants generally agreed that Article 10, paragraph 1 did not accomplish much. The statement that an amendment of a warehouse receipt was ineffective if unauthorised was no more than a restatement of the general law. *The Working Group hence agreed to delete Article 10, paragraph 1.*

37. The participants also observed that Article 10, paragraph 2 was the operative provision. The relevant situation to be covered was the case where a field was initially (negligently) left blank by the warehouse operator and filled in only later, e.g. by the first holder. A subsequent holder, who had no notice of the fact that details on the receipt were filled in not by the warehouse operator but rather by the first holder, should be entitled to enforce the warehouse receipt against the warehouse

operator. The warehouse operator was negligent and exposed itself to a risk similarly to the issuer of a blank cheque.

38. On this basis, one participant expressed the view that Article 10, paragraph 2 was drafted in a manner which left doubts as to what factual situation it was meant to address. In particular, the phrase “without authorisation” was ambiguous, as it could mean both legal authority or factual opportunity (e.g. one could have a receipt in one’s possession, and hence have the factual opportunity to make alterations, but not the legal authority to do so).

39. Further, one participant queried if Article 10, paragraph 2 was drafted in a sufficiently medium-neutral manner to cover the equivalent scenario for electronic warehouse receipts. In response, several participants noted that the problem of a warehouse receipt being issued without the necessary information being filled in was unlikely to arise for electronic warehouse receipts.

40. After discussion, *the Working Group agreed to keep paragraph 2, but to change the heading to “alteration” rather than “amendment” to a warehouse receipt.*

41. Finally, *the Chair* invited the Working Group to discuss whether the current text ensured that a “subsequent holder”, without knowledge of the insertion, could enforce the warehouse receipt as against the warehouse operator. *The Working Group agreed that the current text sufficed to address the concern raised.*

#### Article 11, Loss or destruction of a warehouse receipt

42. The Working Group then turned to Article 11. The first issue it addressed was whether the “loss or destruction” scenario applied only to paper warehouse receipts. The participants generally agreed that whatever loss or destruction could occur to paper receipts could in principle also occur in the case of electronic warehouse receipts, e.g. a holder of an electronic receipt could lose control of its credentials. It was not purely destruction, but rather primarily loss of control insofar as it applied to electronic receipts. Article 11 treated both scenarios equally. *The Working Group agreed to introduce wording in Article 11 which was technologically neutral to cater for the case of electronic warehouse receipts, which might require reinstatement of control rather than the issuance of a new receipt.*

43. One participant queried what would happen if replacement warehouse receipts were issued and the warehouse operator was then faced with the presentation of two different receipts, noting that the issue would be particularly acute in the case of bearer receipts. While some participants observed that such difficulty was addressed by Article 11, paragraphs 1(b) and 3, which required the holder to give adequate indemnity to the warehouse operator, others pointed out that Article 11 was only intended to be a simple, mechanical provision, to the effect that if a warehouse receipt was lost, the holder should be allowed to obtain a replacement. Detailed discussions of competing claims in the case of loss of control could be addressed in the context of Article 17.

44. One participant raised the issue of whether a warehouse operator who issued a new receipt should take steps to ensure that the prior receipt could no longer be used (see Article 12, paragraph 2, concerning the change of medium of a warehouse receipt). It was pointed out that this would be difficult to achieve in practice in the case of lost receipts, and similar difficulties arose in the case of destroyed receipts.

45. Another participant noted that, as a matter of wording, the phrase “holder at the time of loss or destruction” in paragraph 3 appeared to be somewhat ambiguous, in that a warehouse receipt which was destroyed had no holder. *The Working Group agreed to refer the redrafting to the Drafting Committee.*



Article 13, Representations by the depositor

46. The Working Group turned to Article 13. One participant noted that the changes proposed in the draft MLWR in fact introduced, rather than reduced, ambiguity: at law, the party performing the physical depositing (e.g. a transport company) was often the agent of the depositor. The proposed changes appeared to proceed from the underlying assumption that the party performing the physical depositing was in fact not the depositor (or not the agent of the depositor). Supporting the above views, one participant noted the reference to the depositor having authority to deposit in the name of the depositor or some other party introduced confusion.

47. *The Working Group agreed to delete all tracked changes in Article 13(a), such that it would read as follows:*

*"(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~~"*

**(c) Chapter III: Transfers and other dealings**

Structure of Chapters III and IV

48. *The Chair* drew the participants' attention to the issue raised on how to structure the provisions of the MLWR in respect of negotiable and non-negotiable warehouse receipts. As drafted, Chapter III of the MLWR applied to the former whilst Chapter IV applied to the latter. However, it was noted that various provisions in the current Chapter III might apply to non-negotiable warehouse receipts too. *The Chair* invited the Working Group's views on how to approach the restructuring, if any, of Chapters III and IV.

49. One participant suggested that the Working Group should firstly identify the provisions that applied to both negotiable and non-negotiable warehouse receipts, such as Article 15 for example. Once they had been identified, the Working Group could either decide to repeat those provisions applicable to both types of receipts in Chapter IV, or consolidate Chapter III and IV. The single consolidated chapter could begin with provisions applicable to both negotiable and non-negotiable warehouse receipts, followed by a part on provisions applicable only to negotiable receipts, and lastly by a part containing provisions applicable only to non-negotiable receipts. Another participant suggested keeping the current structure, but adding a provision in Chapter IV stating that certain specified Articles from Chapter III also apply to non-negotiable warehouse receipts.

50. The different emphasis carried by the two options was noted: the former on the centrality of negotiable warehouse receipts in the MLWR, whereas the latter would place negotiable and non-negotiable warehouse receipts on a relatively even footing.

51. One participant noted that a simple Article-by-Article analysis might be inappropriate as an Article could partially, but not entirely, apply to non-negotiable warehouse receipts, such as Article 19(c), which currently read "*a transferor of a warehouse receipt represents to the transferee that...(c) the transfer is effective with respect to the title to the receipt and the goods it covers*". It was observed that the last phrase "the goods it covers" should have no application in the case of a non-negotiable warehouse receipt, as such a document was not a document of title to the underlying goods.

52. Other participants noted the potential need to address the issue of pledge bonds and a dual system more clearly insofar as a non-negotiable warehouse receipt was concerned. It was pointed out that most dual systems required all warehouse receipts and pledge bonds to be negotiable in practice, and that the MLWR might be venturing into unknown territory when providing for the

possibility of non-negotiable warehouse receipts (possibly in conjunction with negotiable pledge bonds) in a dual system.

53. Returning to non-negotiable warehouse receipts, other participants queried whether the proposal to address transfers of such receipts was useful in practice, as there would commonly be agreements between the relevant parties that a non-negotiable warehouse receipt should be non-transferable. The usual use case for such warehouse receipts involved a loan where a field warehouse operator issued a non-negotiable receipt in the name of a financier who retained the receipt for security purposes. Control of the goods was passed to a collateral manager, who confirmed that it had custody of goods in the particular warehouse. When the loan was repaid, the financier would “deliver” the non-negotiable warehouse receipt back to the borrower or the relevant collateral manager, or cancel it, and the goods could then be released. In other words, the financier was not a transferee and there was no transfer of the non-negotiable warehouse receipt involved. It was suggested to include a description of this usual use case in the Guide to Enactment.

54. In light of the above, the Working Group debated whether Chapter IV, which primarily addressed a transfer or assignment of non-negotiable warehouse receipts, should be deleted entirely. It was pointed out that the relevant discussion of the usual use case could be better discussed in other UNIDROIT projects such as on agricultural finance.

55. Finally, on a drafting matter, one participant suggested that sub-headings under each “Chapter” should be “Sections” rather than “Parts”. *The Working Group agreed to change the sub-headings in the draft MLWR from “Part A”, “Part B”, etc., to “Section A”, “Section B”, etc.*

#### Article 14, Transfer of a negotiable warehouse receipt

56. A participant raised the query of whether there could be non-negotiable electronic receipts. It was suggested that whatever was possible in the paper world should in principle be possible in the digital world. However, it was noted that the Working Group should, when it comes to the provisions concerning non-negotiable warehouse receipts, verify whether the provisions applied equally to paper and to electronic receipts.

57. *The Chair* then directed the Working Group to the proposal in the draft MLWR to change the phrase “transfer of control” in Article 14, paragraph 2 to “change of control”. Participants noted that “change of control” corresponded to the language used in the draft UNIDROIT Principles on Digital Assets and Private Law. *The Working Group agreed to adopt the proposed change.*

#### Article 15, Rights of transferee generally

58. In the Working Group’s discussion of Article 15, one participant pointed out that, as currently drafted, the *nemo dat* concept did not apply throughout the entire Article. Article 15(a), which expressed the *nemo dat* rule, did not apply to Article 15(b). One participant proposed to redraft Article 15 as follows: “A person to whom a warehouse receipt has been transferred acquires such rights as the transferor was able to convey as regards: (a) the right to the goods, and (b) the benefit of the obligation of the warehouse operator, etc.”

59. *The Working Group agreed to refer the structure and wording of Article 15 to the Drafting Committee.*

60. On a different point concerning Article 15, a participant suggested adding the following underlined phrase to Article 15(b): “A person to whom a warehouse receipt has been transferred acquires...*(b) the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt and the storage agreement*”. This suggestion was met with concerns as to whether it would affect the negotiability of the warehouse receipt. In response,

some participants pointed out that a similar concept applied in the context of bills of lading, i.e. subsequent transferees of a bill of lading were bound by the terms of the closely connected underlying contract of carriage, which often was incorporated by reference (e.g. by hyperlink in the bill of lading).

61. To address the tension identified above, participants proposed the following formulation: “(b) *the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt and terms of the storage agreement which have been incorporated into the warehouse receipt*”.

62. It was however pointed out that the latter suggestion might not, in practice, differ substantially from the former one, as commercial operators would likely make it standard practice to incorporate all the terms of the storage agreement into the warehouse receipt, whether by reference or otherwise. Other participants also pointed out that the introduction of the phrase “and the storage agreement” might open up fundamental legal consequences (including possibly changes to commercial practice) of incorporating the storage agreement into the warehouse receipt.

Article 16, Protected holder of a negotiable warehouse receipt

63. *The Chair* invited the Working Group to consider the proposal to add the phrase “or the goods covered thereby” into Article 16, paragraph 1(b). *The Working Group agreed to refer this as a drafting issue to the Drafting Committee.*

64. *The Chair* then directed the Working Group to consider Article 16, paragraph 2. The Working Group considered the proposal to change the wording of the last sentence as follows: “*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]*”.

65. There were no objections to the proposal in principle, however the participants noted the need to elaborate, in the Guide to Enactment, that this phrase applied only to those enacting States that established a registry for such purposes. It was also noted that the word “claim” as used in the draft wording was broad enough to encompass both a claim to title and a security interest against the goods. It was considered that this too might be explained in the Guide to Enactment.

66. *The Working Group agreed to adopt the proposed changes to Article 16, paragraph 2.*

67. Turning next to Article 16, paragraph 3, one participant queried whether it was necessary to use the phrase “the issue and delivery of the receipt”, and suggested deletion of “and delivery”. Other participants however considered that the two words related to distinct concepts. Issuance came first, and taking possession or control followed. It was considered that this was a drafting issue which depended on how widely the word “issue” could be read.

68. In response to the query as to whether Article 16, paragraph 3 as worded was applicable to electronic warehouse receipts, one participant noted that it was inappropriate to use the standard phrase of “transfer of control” pertaining to digital assets. This was because the situation envisaged was the initial assumption of control by the first holder from the issuer and not the transfer of control from one holder to another. *The Working Group agreed to refer this as a drafting issue to the Drafting Committee.*

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

69. The Working Group discussed the wording of Article 17, paragraph 1, and in particular the use of the word “title” in the phrase “title to the receipt and the goods covered by the receipt”. One participant noted that a different term, “right”, had been used in the context of Article 15, and

suggested that the terminology of the provisions be harmonised, as both addressed the situation of transfer.

70. The Working Group discussed the interrelationship between the two Articles. Some participants observed that Article 15 was intended to be a restatement of the general *nemo dat* rule, and as such the phrase “such rights...as the transferor was able to convey” was appropriate. By contrast, Article 17 went further and embodied a normative policy decision, i.e. that a protected holder of a negotiable warehouse receipt should acquire a better ownership right / title to the goods than that of the transferor. The underlying policy objectives were to enhance the circulation and attractiveness of warehouse receipts. As such, it was appropriate to use different language in Article 17. The Working Group however noted it would be desirable to explain and justify this policy decision in the Guide to Enactment.

71. The Working Group debated whether “title” was the most appropriate concept to express the above policy decision. Some participants noted that “title” could be understood as the apex in the hierarchy of property rights, and corresponded also with the commonly used phrase “document of title”. Other participants however pointed out that, on a literal reading, “rights” could be a wider term than “title” insofar as it encompassed interests other than ownership or partial ownership. One participant also noted that the phrase “documents of title” in fact might refer to different concepts of what title embodied in different legal traditions, and as such was itself subject to ambiguity.

72. *The Working Group agreed to clarify the language by using the terms “ownership” or “lawful owner”, with the drafting choice to be made by the Drafting Committee.*

73. Moving on, a participant noted that the first words of Article 17, paragraph 1, i.e. “Notwithstanding Article 15”, might introduce confusion. The Working Group agreed that it was not intended to contradict Article 15, but rather to offer protection to a protected holder beyond that provided to a holder by Article 15. *The Working Group agreed to refer the redrafting for clarification to the Drafting Committee.*

74. A further issue raised by several participants was whether Article 17, paragraphs 1 to 3 would have the unintentional effect of conferring protected holder status upon a financier who acquired a negotiable warehouse receipt by way of security. It was noted that, in such a scenario, there would be an overlap with a secured transactions law, which the MLWR should defer to. To clarify this issue, one participant suggested introducing a provision to clearly state that, if a negotiable warehouse receipt was transferred only by way of security, the effects of such transfer would be governed by the domestic secured transactions law.

75. The Working Group also discussed Article 17, paragraph 4, and the proposed amendments thereto, i.e. “*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.*”

76. Several participants observed that the suggested amendment did not address the envisaged scenario, i.e. where the depositor transferred the relevant negotiable warehouse receipt to a protected holder, and then a third party creditor sought to enforce a judgment against the depositor with respect to the goods. In such circumstances, the protected holder retained ownership of the goods, which should not be delivered to the third-party creditor. *The Working Group agreed to reject the proposed amendments.*

77. There was also discussion on whether the last sentence of Article 17, paragraph 4 (“*The warehouse operator must not deliver the goods to a person claiming pursuant to such a judgment.*”) was necessary or whether it could be deleted. *The Working Group agreed to defer this as a drafting*

issue to the Drafting Committee, to be addressed upon clarification of the language of the preceding provisions of Article 17, paragraph 4.

Article 18, Third party effectiveness of a security right

78. *The Chair* invited a discussion on the suggested changes to Article 18; namely to include the phrase “as specified by the enacting State”. *The Working Group agreed that this was uncontroversial and adopted the proposed changes.*

Article 19, Representations by a transferor of a warehouse receipt

79. *The Chair* opened the floor for debate on Article 19. The first issue discussed was whether it was desirable to spell out the consequences of misrepresentation in the MLWR text. Several participants noted that the prior decision of the Working Group was that this issue should be left to other domestic law. *The Working Group agreed not to introduce any provision concerning the consequences of misrepresentation into the MLWR.*

80. One participant questioned the desirability and effectiveness of Article 19(c), providing for a representation by a transferor that the transfer was effective with respect to the title to the receipt and the goods covered thereby, which might be problematic in various legal systems as it was a representation as to the legal effect of the transfer. The Working Group noted however that the policy decision underpinning Article 19(c) was sound and suggestions were put forward that the provision could be redrafted in the form of representations as to facts.

81. One participant proposed deleting Article 19(c) as a standalone paragraph, and instead combining the concept into Article 19(b), so as to include a representation that the transferor did not know of any fact which would impair the validity of the transfer. *The Working Group agreed to adopt such proposal.*

**(d) Chapter IV: Non-negotiable Warehouse Receipts**

Article 23, Notice to warehouse operator

82. On the assumption that Chapter IV would be retained, one participant noted that Article 23, paragraph 2 as drafted contained an ambiguity. The phrase “If the warehouse operator acknowledges the assignment” introduced uncertainty as to when the assignment took effect. *The Working Group agreed to change the wording to “Upon the warehouse operator acknowledging the assignment”.*

83. Another participant suggested that Article 23, paragraph 1 should read “*Either the assignor or the assignee...must ~~may~~ notify the warehouse operator of the assignment*” in order for the provision to be workable. It was clarified that the purpose of Article 23, paragraph 1 was to make it clear that either the assignor or the assignee could give notice. Ultimately this was considered an issue of drafting which could be clarified.

**(e) Chapter V: Rights and Obligations of the Warehouse Operator**

Article 24, Application of this Chapter

84. *The Chair* invited comments on whether the phrase “applicable regulatory requirements to be specified by the enacting State” should be added to Article 24(b). Whereas one participant suggested that the phrase was not necessary, others noted that the wording was likely included for consistency with Article 18, and as the Working Group had agreed to include the same language in

Article 18, it should also be included in Article 24(b). *The Working Group agreed to refer this issue as a drafting matter to the Drafting Committee.*

Article 25, Duty of care

85. *The Chair* drew the participants' attention to Article 25, and the Working Group firstly discussed whether to include the phrase "as stated in the warehouse receipt" in square brackets. *The Working Group agreed to keep the phrase.*

86. Next, the participants discussed the question as to whether the word "safekeep" was necessary. The participants agreed that Article 25 described the general obligation of the warehouse operator to preserve the goods received. As to the language, one participant suggested that reference could be made to the United Nations Convention on the International Sale of Goods (CISG), which included provisions on the "preservation of the goods" (e.g. in Section VI). Other participants observed that "preservation" was used in Article 27 and could therefore be adopted in Article 25 for consistency. *The Working Group agreed to use the expression "store and preserve" in Article 25.*

87. The Working Group considered the proposal that Article 25 should require the warehouse operator to act in a commercially reasonable manner, as opposed to imposing an absolute standard. The Working Group agreed that this was a sensible suggestion, and discussed various formulations of the standard for commercial reasonableness. *The Working Group agreed in principle to adopt the language of "the conscientious and competent operator in that particular trade", subject to drafting modifications by the Drafting Committee.*

88. The Working Group then discussed Article 25 in more general terms, noting that it was one of those provisions that offered the greatest possibility of contracting out by agreement between the depositor and the warehouse operator. Participants noted that different jurisdictions had different tolerance for contracting out of the general standards of care, with some not allowing it forthright, others allowing it subject to an essential core of mandatory obligations under the duty of care, and others still not allowing it but allowing limitation on the extent of liability if such a duty was breached. *The Working Group agreed that the MLWR should state that there could be no contracting out for gross negligence, wilful misconduct, conversion of the goods and fraud.*

89. One further issue raised in the discussion was whether Article 25 had any implications in the specific case of shortage of goods. It was noted that the MLWR currently did not include any provision addressing the scenario of shortage, other than the observation of one participant that Article 28 entailed strict liability in the context of shortage.

Article 26, Duty to keep goods separate

90. *The Chair* then referred the Working Group to the question as to whether the phrase "and delivery of the goods" in Article 26, paragraph 1, was necessary. The participants agreed that "delivery" was not necessary once "identification", as provided for in the current draft text, had been carried out. *The Working Group agreed to delete the phrase "and delivery of the goods" currently in square brackets.*

91. Next, *the Chair* invited discussion on whether the phrase "The warehouse operator may commingle" should be added into Article 26, paragraph 2. *The Working Group noted that this was simply a matter of drafting style and agreed to adopt the addition as suggested.*

Article 27, Lien of the warehouse operator

92. *The Chair* directed the Working Group to Article 27 and the proposal to add the phrase "and in any proceeds" in the chapeau. One participant noted that, for jurisdictions which did not have a

modern secured transactions law or had not enacted the UNCITRAL Model Law on Secured Transactions, the inclusion of the phrase might constitute a problematic extension of the law. The participant proposed keeping the text in square brackets and including a specific commentary on this point in the Guide to Enactment.

93. Other participants suggested keeping the text without square brackets, as it helpfully confirmed that the lien (which might be considered possessory in certain jurisdictions) would not be extinguished upon the goods being no longer in the warehouse operator's possession. For example, the goods might be destroyed but insurable, such that the warehouse operator was now "in possession" of the insurance pay-out. Retaining the text without square brackets would clarify the position that the warehouse operator's lien extended to the insurance pay-out.

94. Turning next to Article 27, paragraph 1(b) ("[unexpected] expenses necessary for the preservation of the goods"), the Working Group discussed the question of whether there should be express limitations on the range of possible unexpected expenses which could become the subject of the warehouse operator's lien. One participant pointed out that warehouse operators in practice offered standard tariffs which included fees for different contingencies, and that it was unusual for there to be unexpected expenses that were not covered in the warehouse agreement.

95. Following from such observation, another participant suggested that Article 27, paragraphs 1(a) ("charges for the storage of the goods") and 1(b) could be combined into a single reference to all charges subject to and as provided in the storage agreement. Others suggested that the entire Article 27, paragraph 1(b) was unnecessary because all relevant expenses would be covered under Article 27, paragraph 1(a). However, some argued that Article 1(b) served the purpose of confirming that charges which were not common or usual for the storage of the goods still fell within the lien beyond doubt. Another participant noted that the reference to "lien" in the current draft of Article 27, paragraph 1(b) might require clarification for civil law jurisdictions. It was suggested to use the phrase "statutory lien" instead.

96. The Working Group further discussed Article 27, paragraph 3, and noted that there had been an erroneous omission in Article 27, paragraph 3(a), which should read "charges specified in the receipt". *The Working Group agreed to insert the word "charges"*.

97. Finally, moving onto Article 27, paragraph 4, *the Chair* raised the issue of whether two separate sentences were required to specifically cater for judicial and extra-judicial enforcement of the warehouse operator's lien. A participant suggested that the reference to "relevant other law" in the current draft text would seem to be to the national secured transactions law. As such, it made sense to refer to extra-judicial enforcement only if such enforcement was permitted under the domestic secured transactions law. Accordingly, it was not appropriate to make references to extra-judicial enforcement in the text of the MLWR itself. *The Working Group agreed that discussion of extra-judicial enforcement should be deferred to the Guide to Enactment.*

98. On a related issue, one participant suggested that Article 27, paragraph 4 should explicitly state that the depositor and warehouse operator should have an opportunity to cover the issues of charges and related liens in the storage agreement. In response, other participants noted that it only set out the default position under the general law providing that depositors and warehouse operators were, subject to the applicable domestic law, free to make any agreements in addition to the default statutory position. Therefore, in jurisdictions where consensual agreements might be prohibited, any such explicit statement in the MLWR would be incorrect and undesirable. *The Working Group agreed to defer discussion of consensual security arrangements to the Guide to Enactment.*

Article 28, Obligation of warehouse operator to deliver

99. *The Chair* directed the discussion to Article 28, and the proposed amendments put forward to replace “that person” with “the holder” in Article 28, paragraph 1, and to delete the phrase “covering the goods for cancellation” in Article 28, paragraph 1(a). *The Working Group agreed to proposed changes.*

100. One participant raised a further issue with Article 28, namely that before the holder of a warehouse receipt surrendered its receipt and took delivery of the goods, the holder ought to give an instruction to the warehouse operator of its intention to take delivery. It was proposed to add a provision before Article 28, paragraph 1(a) that the holder should give a relevant instruction to the warehouse operator. *The Working Group agreed to add such provision and referred the matter to the Drafting Committee for further consideration.*

Article 29, Partial delivery

101. *The Chair* referred the Working Group to the proposed changes in Article 29, which were the same as those proposed to Article 28. The Working Group agreed that Article 29 should be consistent with Article 28. *The Working Group agreed to the proposed changes.*

102. The Working Group further noted that it had agreed to add a provision addressing the need for the holder to give an instruction to the warehouse operator to Article 28 prior to obtaining delivery. *The Working Group agreed to add a similar provision into Article 29.*

Article 31, Excuses from delivery obligation

103. The Working Group then turned to Article 31(c), and the proposal to amend the text as follows “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)~~”. *The Working Group agreed to adopt the proposed changes.*

104. *The Chair* invited the Working Group to discuss Article 31(d), and the proposal to give examples of “any other lawful excuse” allowing a warehouse operator to excuse itself from delivery. One participant suggested that examples of lawful excuse included where the goods were stolen, when the warehouse operator had a defense, when there were multiple holders claiming the goods and it was unclear whether any claimants were protected holders, and when the goods were confiscated.

105. One participant observed that the range of possible lawful excuses was narrow in the case of a protected holder, while another suggested that the phrase “lawful excuse” was itself ambiguous and that Article 31(d) could be reconsidered more broadly. It was suggested that Article 31(d) be redrafted to stipulate that the warehouse operator was excused if it was prevented from delivery by order of a competent authority or by any other impediment beyond the operator’s control. The phrase “any other impediment beyond the operator’s control” was a reference to the language of the CISG. *The Working Group agreed to adopt this proposal subject to wording to be confirmed by the Drafting Committee.*

Article 32, Termination of storage at warehouse operator’s option

106. *The Chair* referred the Working Group to the issue of whether the title of Article 32, “Termination of storage at warehouse operator’s option”, was sufficiently clear. One participant suggested that the title could be simplified to “Termination by warehouse operator”. Another participant queried whether the focus should be on the removal of the goods rather than the termination of the storage agreement. However, it was noted that termination necessarily went hand



in hand with the removal of the goods and that it was commercially impracticable for a warehouse operator to remove the goods without terminating the storage agreement. *The Working Group agreed to retain the original wording of the title.*

107. The Working Group also discussed the fact that there was no provision in Article 32 addressing the usual case where a holder of a warehouse receipt claimed the goods. One participant noted that Article 32 as drafted only addressed the unusual case where goods were abandoned. It was suggested to insert a provision describing the usual case, for example, that the validity of the warehouse receipt came to an end at the expiry of the term stated therein. However, other participants observed that the usual scenario might already be covered in Article 28. *The Working Group agreed that the Drafting Committee would consider whether to amend Article 32 or to make the reference to Article 28 more explicit.*

108. Turning next to Article 32, paragraph 1, one participant raised the question of whether a warehouse operator necessarily knew who might have an interest in the goods. If not, then the issue arose as to whom the warehouse operator should give notice if it wished to terminate the storage agreement for cause. In response, another participant reported that in practice there were legal systems in which the warehouse operator would, upon making the decision to terminate the storage agreement and sell off the goods, give notice of the intended sale only in a public medium, such as a newspaper. One participant observed that Article 32, paragraph 1 therefore went further than existing commercial practice at least in these legal systems, because it required giving notice to specific persons and not generally to the public.

109. It was however noted that, in an electronic system, the warehouse operator would at least know the identity of the last registered holder of the warehouse receipt, which in practice would likely be the primary claimant of the goods. Hence the giving of notice specifically to claimants was less problematic.

110. Recapping the above discussion, it was suggested to change the existing phrase from “to all persons known to the warehouse operator to claim an interest in the goods” to “the general public” or, alternatively, to add “and the general public” thereafter.

111. The Working Group moved on to discuss the language of Article 32, paragraph 1(a). One participant noted that the phrase “at the end of the storage period” was ambiguous, as it was unclear whether the warehouse operator could give the requisite notice before the expiry of the term of storage or only thereafter.

112. Further, the Working Group considered the proposal in Article 32, paragraph 2, to make the following changes: *“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 date contemplated by paragraph (1)...”* *The Working Group considered this a drafting issue and agreed to refer it to the Drafting Committee.*

113. *The Chair* then invited the participants to consider the language in Article 32, paragraph 3, and in particular whether to remove the term “deteriorate”, on the grounds that the existing term of “decline in value” sufficed to cover the situation of “deteriorate”. Several participants noted that the two terms might be conceptually distinct, but that in practice, “decline in value” should be sufficiently broad to encompass all relevant situations. It was also noted that “decline in value” was more neutrally worded as compared to “deteriorate”, which might have connotations of default. *The Working Group agreed to delete “deteriorate”.*

114. *The Chair* also suggested that the phrase “If the warehouse operator believes” in Article 32, paragraph 3 should be qualified by a reference to the reasonableness of the belief, e.g. “believes with reasonable grounds”. *The Working Group agreed to amend Article 32, paragraph 3 as suggested.*

115. Further on Article 32, paragraph 3, some participants noted that there was ambiguity in the current draft as to whether it contemplated two notices being given by the warehouse operator (one under Article 32, paragraph 1, and another under paragraph 3), or whether a single notice sufficed. *The Working Group agreed to refer this issue to the Drafting Committee.*

116. The Working Group also noted that, in practice, before a warehouse operator would sell stored goods because of a decline in value to less than the amount secured by its lien, it would first make a margin call to the holder to require further security, and only if no satisfactory security was provided would the goods be sold. One participant suggested that this practice should be reflected in an express provision in the MLWR, whereas others noted that Article 32 contemplated a situation of default where the holder did not take delivery. Where default occurred and the goods declined in value, it appeared to be inefficient and uncommercial to require further notice to be given to the holder. *The Working Group agreed to refer this issue to the Drafting Committee.*

117. Turning then to Article 32, paragraph 4, a participant suggested that the warehouse operator should first demand immediate removal of hazardous goods before selling them. It was suggested to introduce this as an express provision into Article 32.

118. The Working Group also discussed the provision in the current draft Article 32, paragraph 4 which provided that the warehouse operator might sell hazardous goods “without advertisement”. One participant suggested retaining the requirement to advertise publicly, particularly in the situation where the warehouse operator did not know whom to give specific notice to. Other participants however considered that to require advertisement in the case of hazardous goods which might require urgent disposal could be unworkable.

119. Further, in relation to the square bracket reference to “private sale” in the draft text, the Working Group debated if Article 32, paragraph 4 should give more general guidance as to the sale process. A few participants suggested that details of the sale process (as it particularly concerns hazardous goods) could be more appropriately provided in the Guide to Enactment, whereas others suggested that the text of the MLWR could make references to a general standard, e.g. of commercial reasonableness. *The Working Group agreed to refer this issue to the Drafting Committee.*

120. Finally, one participant observed that at least some of the difficulties concerning Article 32 arose from the fact that this single provision was attempting to deal with many different scenarios, including default by reason of unpaid storage fees or non-removal of goods upon expiry of storage term, termination in the case of an indefinite storage period, deterioration in value of the goods, and goods becoming hazardous in nature.

121. The Working Group noted that there had been extensive discussions on Article 32. *The Working Group agreed to refer Article 32 generally to the Drafting Committee for further consideration.*

## **(f) Chapter VI: Pledge Bond**

### Overview and structure of Chapter VI

122. *The Chair* invited the Working Group to provide general comments on Chapter VI. Participants described in detail how the traditional paper-based pledge bond system and how the modern electronic pledge bond system worked in various jurisdictions. It was noted that pledge bonds were usually issued at the same time as the warehouse receipt, and that the requirements of form which applied to warehouse receipts applied equally to a pledge bond (with the only exception that the name/description of the document would be different).

123. Further, it was noted that in modern electronic pledge bond systems, the warehouse receipts and pledge bonds would usually be kept in the control of a custodian, and this custodian would in practice be able to ascertain the identities of the warehouse receipt holder and the pledge bond holder at all material times (if necessary, providing information to prospective financiers).

124. One participant noted that, in light of the aforesaid discussion, the structure of Chapter VI could be reconsidered as a whole and simplified. It was suggested that the key points to be brought out from Chapter VI included: (1) a pledge bond was a document in the same form (save for name/description) and issued at the same time as a warehouse receipt; (2) how a pledge bond could be detached from its parent warehouse receipt; (3) information which should be inserted on the pledge bond upon detachment; and (4) the rights of a pledge bond holder. It was further suggested that, in terms of drafting structure, provisions in Chapter VI could simply make references to relevant provisions in the rest of the MLWR addressing warehouse receipts and state that such provisions apply equally to pledge bonds.

125. The participants also discussed the issue of whether a State would wish to enact a hybrid of the law on warehouse receipts allowing for both single and dual receipts. One participant reported that certain legal systems allowed for both options to exist simultaneously. It was noted that this would require a further provision confirming on the face of each warehouse receipt whether it was a single or dual document, as well as further clarification in the MLWR text (possibly in footnotes) of how Chapter VI might need to be modified to cater for such possibility.

126. *The Working Group agreed that, subject to discussions specific to each Article as provided for below, the Drafting Committee should revisit the structure and drafting of Chapter VI.*

Articles 33, Pledge bond, and 34, Form of pledge bond

127. In light of the foregoing discussion, one participant suggested Article 33 and 34 as drafted were not necessary at all, and that the definition and form of a pledge bond could simply be provided for by reference to earlier provisions of the MLWR. However, other participants noted that it would be helpful to provide for these matters expressly and separately in the MLWR, and that reference to earlier provisions could be included in addition to the current text. *The Working Group agreed to refer this issue to the Drafting Committee.*

128. More specifically as to Article 34, the Working Group agreed that it should not be possible to issue pledge bonds after issuance of the warehouse receipt. *The Working Group therefore decided not to allow for this in the draft MLWR.*

Article 35, First transfer and effect of a pledge bond

129. *The Chair* invited the participants to consider Article 35. *The Chair* observed that the title of the provision was problematic in that the initial detachment of the pledge bond was not an “issue” or “first transfer” of a pledge bond. Instead, the initial detachment “constitutes” the pledge. *The Working Group agreed to refer this issue to the Drafting Committee.*

130. The participants noted that Article 35 might be an appropriate place to include additional provisions providing for the detachment of a pledge bond from its associated warehouse receipt, for what information ought to be entered onto the pledge bond at the time of detachment (i.e. terms of the loan), and for whether the warehouse operator was required to be notified of the detachment. One participant further noted that it could be improved by a provision that the pledge bond and warehouse receipt could circulate either jointly or separately. In response, it was noted that this was already provided for in Article 39, paragraph 1. *The Working Group agreed to move Article 39, paragraph 1 up to Article 35.*

131. A couple of participants made further drafting suggestions on Article 35. First, it was suggested that it should simply provide that a pledge bond granted its holder a possessory security right in the goods covered by the warehouse receipt. Second, another participant noted that it might need to be reworded in a technology neutral manner because, as drafted, it appeared to focus on the operation and effects of paper pledge bonds.

132. The Working Group then turned to consider whether the definition of “holder” in Article 2 should be amended to include holders of pledge bonds. One participant suggested that the definition of “holder”, and other provisions referring to “holder” or “protected holder”, could include additional references to pledge bonds in square brackets. Footnotes could be inserted in these provisions clarifying that the square bracket provisions apply only for States which had enacted Chapter VI. *The Working Group agreed with this proposal in principle and referred the matter of drafting to the Drafting Committee.*

133. Next, the participants discussed the effect of Article 35, paragraph 2(b), which required delivery of both the warehouse receipt and the pledge bond before the warehouse operator could release the goods. While it was observed that this was contrary to the old law and practice in many systems whereby a warehouse receipt holder could deposit a sum of money sufficient to pay off the loan with the warehouse operator (or a custodian as appropriate) and take possession of the goods, the Working Group confirmed that, as a policy decision, the old practice was not to be recommended. The undesirable features included potentially depriving the pledge bond holder of its security without its consent, and requiring the warehouse operator/custodian to act effectively as a trustee. It was noted that explanations of this policy decision could be made in the Guide to Enactment.

134. When one participant sought further clarification of Article 35, paragraph 2(b), as to whether a creditor holding only the pledge bond should be able to obtain possession of the goods, it was pointed out that this was a matter for domestic secured transactions law. However, as a general rule, if the debtor was in default, then the creditor should be able to foreclose on the security (the underlying goods) without any need to produce the warehouse receipt. *The Working Group agreed with these observations and agreed to introduce express provisions to this effect in Article 35, to be prepared by the Drafting Committee.*

135. The Working Group moved on to discuss Article 35, paragraph 3, and whether there was a need to notify the warehouse operator of the detachment of the pledge bond. Several participants queried how parties in the industry would be aware if the pledge bond had been detached at all without notification. In response, it was explained that, even in a paper system, so long as the warehouse receipt made clear on its face that it was a dual document, and it was not presented together with the pledge bond, then all parties would necessarily know that the pledge bond had been detached.

136. Other participants went further and queried whether Article 35, paragraph 3 was necessary at all. This was because the rationale for such requirement arose under the old practice described previously in the context of Article 35, paragraph 2(b): there was a need to notify the warehouse operator to ensure that the warehouse operator would have at least some information about the loan, so that the warehouse operator would know the amount it needed to collect if a warehouse receipt holder sought to take delivery of the goods without simultaneously presenting the pledge bond. However, these participants pointed out that, insofar as the Working Group had agreed to keep Article 35, paragraph 2(b) (such that delivery of the goods could only be made where both warehouse receipt and pledge bond were presented), then that scenario would not arise at all. *The Working Group agreed to delete Article 35, paragraph 3.*

137. In summary, it was noted that Article 35 had given rise to extensive discussions. *The Working Group agreed to refer Article 35 in general to the Drafting Committee in light of the aforesaid discussions.*

Article 36, Control of an electronic pledge bond

138. The Working Group referred to the general discussion on the drafting structure of Chapter VI. *The Working Group agreed to delete Article 36, and instead to provide that earlier provisions of the MLWR similarly applied to pledge bonds insofar as the concept of control was concerned.*

Article 37, Completion of a pledge bond

139. *The Chair* invited the Working Group to consider Article 37. One participant observed as an overarching remark that the information provided for in Article 37(a) was generally necessary and ought to be provided when the pledge bond was detached. However, the wording used, i.e. to “issue” or to “complete” a pledge bond, was not ideal. *The Working Group agreed to refer the wording of Article 37 to the Drafting Committee.*

140. The Working Group proceeded to consider the question posed as to whether the “interest” of the loan should be entered onto the pledge bond upon detachment. One participant observed that whether a specific reference to “interest” was required depended on whether the “amount secured” included the interest element already. Other participants, supporting this observation, noted that “amount secured” usually included the principal, interest and all applicable charges. It was also noted that the interest rate charged might be commercially sensitive information and the financier might wish to limit disclosure thereof.

141. Other participants queried if a pledge bond could be used to secure more complex lending arrangements beyond a simple term loan, including instalment loans or revolving credit facilities. It was observed that pledge bonds supported only simply lending arrangements. The Working Group agreed to keep the text of the MLWR as simple as possible and to not specifically address such complex scenarios.

142. *The Working Group agreed not to add a provision specifically addressing interest.*

143. Turning then to Article 37(b), one participant suggested that the proposed requirement for the warehouse operator to acknowledge issuance of the pledge bond was unnecessary and could be deleted. Going further, other participants suggested that the entire Article 37(b) was unnecessary and could be deleted. It was noted that in practice, the name usually entered onto a pledge bond was the name of the first holder of the pledge bond, and not that of the holder of the warehouse receipt. *The Working Group agreed to delete Article 37(b).*

144. The Working Group further discussed the proposed suggestion that a notation be made on the warehouse receipt that the pledge bond had been detached, and whether the information in Article 37(a) should be noted on the warehouse receipt as well. In light of the aforesaid discussions, *the Working Group agreed that the proposed notation was not necessary.*

Article 38, Amendment of information in a pledge bond

145. The Working Group referred to the general discussion on the structure of Chapter VI. *The Working Group agreed that Article 38, on the amendment of pledge bonds, could be deleted and references made to other provisions of the MLWR, such as Article 10.*

Article 39, Transfer of a pledge bond

146. *The Chair* invited the participants to consider the question of whether a pledge bond could be made to bearer. Several participants noted that this was an unrealistic and commercially improbable arrangement, at least in modern practice, and that there should be no need to address it specifically.

147. One participant however noted that other uniform law instruments, such as the UNCITRAL Model Law on Electronic Transferable Records, included provisions for electronic records to be made to bearer, and suggested that the MLWR should retain a similar provision for consistency. In response, it was noted that the context, for example, for “bearer” bills of lading was very different: banks did not want to endorse their names on the bill so as to avoid liability for the underlying goods. In the pledge bond context, however, financiers’ incentives were different, as they would not assume any liability for the underlying goods by having their names entered onto the pledge bond. In practice, therefore, financiers were unlikely to accept bearer pledge bonds. *The Working Group agreed not to make provisions for bearer pledge bonds in the MLWR.*

148. One participant further noted that there might be inconsistency in the language of Article 39, paragraphs 2 and 3. It was queried whether “endorsement and delivery” of a paper pledge bond in paragraph 2 was functionally equivalent to “transfer of control” in paragraph 3. In response, other participants suggested that “delivery” for a paper pledge bond was equivalent to “transferring control” for an electronic pledge bond.

#### Article 40, Termination of a pledge bond

149. The Working Group discussed Article 40, paragraph 1. One participant raised the question of what would happen to the security right if the holder of the warehouse receipt paid off the amount secured by the pledge bond under Article 40, paragraph 1. It was suggested that this generally meant the security right would be extinguished assuming the debt had been paid. Consequently, participants queried what precise factual scenario Article 40, paragraph 1 was trying to address and noted this was unclear from the draft text.

150. Turning to Article 40, paragraph 2, a participant suggested a further amendment to Article 40 to provide that the rights of the pledge bond holder be subordinated to the lien of the warehouse operator.

151. *The Working Group agreed to refer Article 40 in general to the Drafting Committee for further consideration.*

#### **Item 4: Organisation of future work**

152. *The Chair* drew the attention of the Working Group to Item 4 on the agenda on the organisation of future work.

153. It was noted that the deadline for the submission of a paper on warehouse receipts at UNCITRAL would be 10 May 2023. Nevertheless, if the UNIDROIT Governing Council, which was to decide on the approval of the draft Model Law at its session scheduled for 10-12 May 2023, would request any modifications to the Model Law text, it would still be possible to subsequently transfer these modifications into the paper to be submitted at UNCITRAL. The Secretariat would inform UNCITRAL of any modifications to the draft Model Law that might be requested by the Governing Council immediately following the Council’s discussion at its 102<sup>nd</sup> session.

154. With regard to the subsequent process at UNCITRAL, it was explained that the draft Model Law would be submitted to Working Group I, scheduled to meet at the end of September 2023 and then again in February 2024. Hence, there would be at least two week-long sessions of an intergovernmental working group devoted to the project. It was highlighted that this might also provide an opportunity to discuss, as appropriate, some suggestions that a couple of participants had made concerning the addition of provisions on a few more issues during the final Working Group session at UNIDROIT, and to review the Group’s decisions on a few other matters.

155. It was anticipated that UNCITRAL would not need more than two Working Group sessions to consider the draft. The draft Guide to Enactment could be sent to UNCITRAL for consideration at the Working Group meeting in February 2024.

**Item 5: Any other business**

156. In the absence of any other business, *the Chair* thanked all participants for their participation and invaluable contributions to the discussion, and declared the session closed.

**ANNEXE I****LIST OF PARTICIPANTS****EXPERTS**

Ms Eugenia G. DACORONIA (Chair)  
Attorney-at-law - Professor of Civil Law  
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Former Partner and Head of the Trade & Commodity Finance Groups  
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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Mr José Angelo ESTRELLA FARIA Principal Legal Officer and Head of the Legislative Branch International Trade Law Division
	Mr Luca CASTELLANI Legal Officer International Trade Law Division
WORLD BANK GROUP	Mr John WILSON Senior Financial Sector Specialist Former Lead Economist Development Research Group

**INTERNATIONAL NON-GOVERNMENTAL ORGANISATION**

INTERNATIONAL LAW INSTITUTE (ILI)	Mr Marek DUBOVEC Director of Law Reform Programs <u>Advisor to UNIDROIT Secretariat</u>
KOZOLCHYK NATIONAL LAW CENTER (NatLaw)	Mr Spyridon BAZINAS Lead Advisor

**PRIVATE SECTOR REPRESENTATIVES**

ASSOCIATION OF GENERAL WAREHOUSES	Ms Elsa AYALA Executive Director
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**OTHER OBSERVERS**

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KENYA	Ms Shighadi MWAKIO Deputy Registrar, MPSR Business Registration Service Office of the Attorney-General & Department of Justice
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**ANNEXE II****ANNOTATED DRAFT AGENDA**

1. Opening of the session by the Chair
2. Adoption of the agenda and organisation of the session
3. Consideration of the revised Draft Model Law on Warehouse Receipts together with any comments received during the consultation (Study LXXXIII – W.G.6 – Doc. 2)
4. Organisation of future work
5. Any other business
6. Closing of the session