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**UNIDROIT Working Group on a Model Law on  
Warehouse Receipts – Guide to Enactment**

***First session (hybrid)***  
**Rome, 13-15 November 2023**

UNIDROIT 2023  
Study LXXXIII A – W.G.1 – Doc. 2  
English only  
November 2023

**DRAFT GUIDE TO ENACTMENT  
OF THE UNCITRAL/UNIDROIT MODEL LAW  
ON WAREHOUSE RECEIPTS**

1. This document contains the preliminary draft Guide to Enactment of the Model Law on Warehouse Receipts for consideration by the Working Group at its first session dedicated to the Guide to Enactment.
2. The draft Guide was prepared by members and observers of the Working Group, in cooperation with the Secretariat, following the approval of the draft Model Law on Warehouse Receipts by the UNIDROIT Governing Council on 10 May 2023. It is to be considered in conjunction with the draft Model Law as revised by the UNCITRAL Secretariat following the discussion of the text by UNCITRAL Working Group I on 25–29 September 2023 (A/CN.9/WG.I/WP.133) and the report of that Working Group ([UN document A/CN.9/1158](#)).
3. The draft Guide to Enactment is composed of four main parts:

|          |   |                               |
|----------|---|-------------------------------|
| Part I   | – | Purpose of this Guide         |
| Part II  | – | Introduction to the Model Law |
| Part III | – | Article-by-article Commentary |
| Part IV  | – | Complementary Legislation     |
4. Parts I and II introduce the purpose of the Guide and the Model Law, respectively. Part III provides comprehensive commentary on the individual provisions of the Model Law, including on their background, purpose and relationships with the more general legal framework of a State enacting the Model Law. Part IV offers guidance for drafting the complementary legislation that is required to implement the law at the domestic level.
5. The Secretariat is grateful to Working Group members and observers Ms Elsa Ayala, Mr Marek Dubovec, Mr Adam Gross, Mr Thomas Johnson, Ms Dora Neo, Ms Jacqueline Odundo, Ms Teresa Rodriguez De Las Heras Ballell, Mr Hiroo Sono and Ms Guo Yu for their contributions to this document.

**UNCITRAL/UNIDROIT Model Law on Warehouse Receipts  
GUIDE TO ENACTMENT**

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## **UNCITRAL/UNIDROIT Model Law on Warehouse Receipts**

### **GUIDE TO ENACTMENT**

#### **I. PURPOSE OF THIS GUIDE**

1. The purpose of this Guide to Enactment is to provide comprehensive guidance for implementing the Model Law on Warehouse Receipts (the “Model Law” or “MLWR”) at the domestic level.<sup>1</sup> Accordingly, the Guide is composed of four parts: Parts I and II introduce the purpose of the Guide and the Model Law, respectively. Part III provides comprehensive commentary on the individual provisions of the Model Law, including on their background, purpose and relationships with the more general legal framework of a State enacting the Model Law (the “enacting State”). Part IV offers guidance for drafting the complementary legislation that is required to implement the law at the domestic level. Throughout, the Guide explains the relation with broader domestic legislation as well as with the relevant international legal framework, in particular the UNCITRAL Model Law on Secured Transactions<sup>2</sup> (the “MLST”) and the UNCITRAL Model Law on Electronic Transferable Records<sup>3</sup> (the “MLETR”).
2. The Guide is primarily addressed to legislative and executive branches of Governments considering to introduce or reform their legal framework for a warehouse receipt system. Moreover, by providing explanations of the ratio and application of the provisions, it is also a helpful source for users, including warehouse operators, depositors, holders of warehouse receipts and lenders, as well as judges, arbitrators and other practitioners. Finally, the Guide can also be used as a tool by development institutions supporting countries in legal reforms.
3. Several provisions of the Model Law, as well as the optional chapter V (Pledge bonds), indicate that an enacting State is required to make a decision or choose among alternative options. Most of these options were included in the Model Law to take account of structural differences of approach between different legal families and traditions concerning the design of a warehouse receipt system. The Guide explains the background and implications of such decisions or choices in order to assist enacting States in that respect.
4. Recognizing that the trend of legal reform is towards introducing a framework for electronic warehouse receipts, this Guide provides detailed discussion towards implementing a framework that supports and promotes the issuance and transfer of electronic warehouse receipts, irrespective of the technology or model used.
5. The Guide was prepared by the UNIDROIT Working Group on a Model Law on Warehouse Receipts (the “UNIDROIT Working Group”) in collaboration with the Secretariats of both UNIDROIT and UNCITRAL, based on the deliberations of the UNIDROIT Working Group and UNCITRAL Working Group I.<sup>4</sup>

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<sup>1</sup> UNIDROIT Document A.G. (81) 9.

<sup>2</sup> United Nations publication, Sales No. E.17.V.1.

<sup>3</sup> United Nations publication, Sales No. E.17.V.5.

<sup>4</sup> The reports of the UNIDROIT Working Group are available at the UNIDROIT homepage at <https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts/>. The reports of the UNCITRAL Working Group are contained in documents [...]. Earlier versions of the Guide to Enactment are contained in documents [...].

## II. INTRODUCTION TO THE MODEL LAW

### A. BACKGROUND

6. Warehouse receipts are documents, in paper or electronic form, issued by warehouse operators that evidence ownership rights in a stored commodity or goods and that may be traded or used as collateral to obtain credit.

7. They have served the interests of globalizing industry historically, such as in the case of the London Metal Exchange, whose first warehouse receipt was issued in 1883 to facilitate the global trade in metals, as well as in contemporary times, for example to enable the emergence of new trading hubs such as Dubai, which introduced its warehouse receipt platform, Tradeflow, in 2012. They have also served the interests of smallholder farmers and other market actors across Africa and Asia since the early 1990s, and Latin America since much earlier, as instruments to enable access to storage, finance and markets. To date, over 30 African economies are known to have introduced warehouse receipts in one form or another.

8. Recognizing the important potential of warehouse receipts to strengthen the agricultural, industrial and financial systems of developing economies, several global development institutions, such as the World Bank Group (WBG), the United Nations Food and Agriculture Organization (FAO) and the European Bank for Reconstruction and Development (EBRD), have provided support for warehouse receipt systems, of which legal reform is often a key component. Several of these organizations have published guidance documents on legal reform, such as *Designing warehouse receipt legislation: Regulatory options and recent trends* (2015) by the FAO and EBRD, as well as *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (2016) by the WBG.

9. The approach to warehouse receipt legal reform often involves the enactment of a warehouse receipt system (WRS) law. This has a wider scope than the MLWR. A WRS law typically comprises both private and regulatory law. The MLWR focuses on the private law aspects only, i.e. those that define the rights and obligations of the parties to the warehouse receipt in a transactional context. Regulatory law, by contrast, would also cover – inter alia – the following aspects:

- Mandate, powers and governance of the regulatory authority;
- Licensing criteria and procedures for warehouse operators (sometimes also quality and weight certifiers and inspectors); and
- Offenses, penalties and disciplinary procedures.

10. The introduction of the warehouse receipt, in most cases as part of a system for regulating and overseeing the warehouse operators that issue them, has facilitated trade and finance. Further, the use of warehouse receipts is promoting the integrity and resilience of markets and the financial system, and is protecting the interests of the parties to a trade or financing transaction. It does so through five main functions:

- Good Delivery: Presentation of the document grants the holder of the warehouse receipt an entitlement to collect the stored commodity (subject to payment of the operator's fees), thus giving the depositor confidence in the first place to store goods in the warehouse;
- Preservation: The holder of the warehouse receipt receives a commitment that the stored goods will be preserved according to standards and conditions specified by the warehouse operator, as well as the general duty of care;
- Valuation: The specification on the warehouse receipt of the type, origin, weight and/or quality of the stored goods enables their valuation by financiers or trading

counterparties, in most cases without needing to perform prior physical inspection, and thus drives efficiencies among the counterparties, including over large distances;

- Encumbrance: The warehouse receipt is a document of title that can be encumbered so as to secure the stored goods underlying the warehouse receipt as collateral against credit; and
- Trade: The warehouse receipt can be transferred<sup>5</sup> to a trading counterparty, “sight unseen”, to fulfil delivery obligations, without requiring the physical movement or recertification of the goods, whether in a bilateral “over the counter” setting or through a multilateral exchange-traded marketplace.

11. Underpinning all five functions is a guarantee provided by the warehouse operator, as required by law, of the presence, condition and availability of the goods, backed by sufficient financial resources (also known as “capital adequacy”) to provide compensation in the event of damage to the goods (e.g. through theft, fire, flood and other “perils”) or a breach of obligations by the operator (e.g. as a result of fraud, negligence or unexplained losses). Financial resources that stand behind the warehouse operator’s guarantee typically include insurance, performance bond and balance sheet (the latter subject to minimum net worth requirements).

12. Specifically, in developmental settings, warehouse receipts have become increasingly salient as an instrument of financial inclusivity. Prevailing lending practices in the developing world usually place emphasis on traditional forms of collateral such as real estate and fixed assets. In practice, smaller-scale actors, including smallholder farmers, tend to lack traditional collateral and thus face barriers to accessing finance. However, smaller-scale actors do often have access to movable assets – in particular, agricultural inputs and outputs – that may be stored in a warehouse with the warehouse receipts used as collateral for a loan.

13. Large corporations tend to operate at a scale sufficient to support the relatively high cost of “collateral managers” which take custody of movable assets on behalf of the lender in the borrowers’ own private warehouse that they wish to pledge as collateral for finance. This arrangement is known as “field warehousing”, and typically results in the issuance by the collateral manager of a non-negotiable warehouse receipt. Smaller-scale actors may not have private warehouse availability and/or may not operate at sufficient scale to bear the high cost of collateral management. The warehouse receipt is an instrument that supports the availability of public warehousing in which the costs of the warehousing and custody service may be shared across multiple parties, enabling each of the parties storing goods in the public warehouse to collateralize their stored goods against finance.

14. Finally, it is noted that the introduction of warehouse receipts has often been coordinated with the emergence of commodity exchanges. Warehouse receipts are integral to the settlement system that operates alongside an exchange’s trading platform, enabling the fulfilment of the respective rights and obligations of the buyer and seller in a transaction. Specifically, the warehouse receipt ensures that goods placed for sale on the exchange are already weight- and quality-certified and secured in the warehouse ahead of the trade, with ownership efficiently transferred from seller to buyer once the transaction is confirmed. This is essential to preventing defaults that may otherwise occur, and which could undermine confidence in the marketplace.

## **B. PURPOSE OF THE MODEL LAW**

15. The purpose of the Model Law is to assist States in developing a modern warehouse receipts law supporting the issuance and transfer of electronic and paper-based receipts alike. The Model Law

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<sup>5</sup> The differences between negotiable and non-negotiable warehouse receipts, and their respective modes of transfer, are addressed in Section [...], below.

is intended to be useful to States that currently do not have enabling warehouse receipts laws, as well as to States that already have such laws but wish to modernize them – for instance to support the use of electronic warehouse receipts.

16. The primary objective of the MLWR is to facilitate commercial transactions that involve stored goods. While goods stored in warehouses may be transferred conveniently through the use of warehouse receipts, they may also be used as collateral. Thus, another objective of the MLWR is to promote short-term financing in the agricultural sector. By assisting States to develop well-designed warehouse receipts laws, the Model Law will facilitate access to credit and reduce the cost of financing for farmers by providing a secure form of collateral to obtain loans. The standardization of rules relating to the issuance and transfer of warehouse receipts will improve confidence in warehouse receipt systems, which will in turn attract private sector investments to the agricultural sector.

17. In addition, the harmonization of warehouse receipt laws will reduce barriers to international markets.

18. This legal framework will be particularly useful to developing countries, especially those on the African continent, where it is estimated that about 70% increase in food production will be required by 2050 in order to feed a global population of 9.1 billion people.<sup>6</sup> By improving the ability of farmers in these countries to grow and store crops and other agricultural products, the MLWR has the potential to increase global food production and assist in overcoming the food security challenge. In this regard, the Model Law has the potential to contribute to achieving the United Nations' Sustainable Development Goal 2 which aims to "End hunger, achieve food security and improved nutrition and promote sustainable agriculture".

### C. SCOPE

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19. The Model Law contains provisions relating to the private law aspects of warehouse receipt systems, i.e. the issuance and transfer of warehouse receipts and the rights and obligations of the parties in a transactional context. It does not contain regulatory provisions such as those generally included in a warehouse receipt system (WRS) law, e.g. licensing, supervision and insurance requirements. The enactment of the MLWR should be accompanied by respective complementary rules further elaborated on in Part IV.

20. It is important to note that the scope of the MLWR extends beyond agricultural commodities to other types of goods which may be the subject of a warehouse receipt. Article 1, paragraph 1 of the Model Law explains that it applies to "warehouse receipts", with no restriction on the type of goods that may be covered by such receipts. Furthermore, article 1, paragraph 2 provides a general definition of a warehouse receipt which does not include any requirement that would limit its application to any particular sector. As such, the Model Law will be useful in many other sectors, such as mining, technology and motor vehicle industries.

21. An important aspect of the scope of the MLWR is its applicability to both paper-based and electronic warehouse receipts. In recent years, many States have introduced electronic warehouse receipts (EWRs) as an alternative to their paper-based counterparts. EWRs improve trading efficiency and facilitate access to credit by removing the need for the physical transfer of receipts and thus allowing for instantaneous, low-cost transactions. In order for this to be effective, however, it is essential that EWRs are "functional equivalents" of their paper-based counterparts and vice versa. Article 1, paragraph 2 is important in this regard as it clarifies that a warehouse receipt may be either an "electronic record" or a "paper document". Moreover, article 14 allows for the change of medium of a warehouse receipt without affecting the rights and obligations of the parties. In general, the

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<sup>6</sup> See FAO, How to feed the world in 2050, Executive summary paper, 2009, available at: [https://www.fao.org/fileadmin/templates/wsfs/docs/Issues\\_papers/HLEF2050\\_Global\\_Agriculture.pdf](https://www.fao.org/fileadmin/templates/wsfs/docs/Issues_papers/HLEF2050_Global_Agriculture.pdf).

MLWR was drafted using technology-neutral language so as not to prefer one medium over the other; however, in some instances it was necessary to differentiate between the two. For example, the definition of a “holder” in article 2, subparagraph c refers to “control” in the case of EWRs as opposed to “possession” in the case of paper-based receipts. The concept of control in relation to EWRs is further defined in article 3. This distinction can be seen reiterated several times throughout the Model Law and ensures that the provisions apply equally to both electronic and paper-based warehouse receipts.

22. The scope of the MLWR also extends to both negotiable and non-negotiable warehouse receipts. The definitions of both are provided in article 2, subparagraphs d and e respectively. Chapter III of the Model Law sets out the rules relating to the transfer and creation of security rights in negotiable warehouse receipts. In earlier drafts of the MLWR, there was also a chapter specifically dedicated to non-negotiable warehouse receipts; however, this was eventually deleted as the typical use of non-negotiable warehouse receipts in field warehousing arrangements was deemed to be outside the scope of the MLWR. Therefore, while the scope of the Model Law encompasses both negotiable and non-negotiable warehouse receipts, emphasis is placed on the centrality of negotiable warehouse receipts towards the fulfilment of the MLWR’s primary objectives.

23. The scope of the Model Law also extends to both the transfer and security functions of (negotiable) warehouse receipts. Articles 15 through 18 deal with the transfer of paper and electronic warehouse receipts as well as the effects of such transfers on the transferee. These provisions, particularly those relating to transferees with protected holder status, are important in enhancing trading efficiency as they promote confidence in the warehouse receipt system. Article 19 provides for the perfection of security rights in warehouse receipts, which will facilitate access to credit by establishing warehouse receipts as a secure form of collateral for private sector investors and hence reducing the cost of financing. However, enacting States wishing to form a conducive legal framework for secured transactions, including for security rights in warehouse receipts, are encouraged to implement the MLST.

24. Finally, the inclusion of the optional chapter V on “Pledge bonds” enables the Model Law to apply to both single and dual warehouse receipt systems. For States that wish to maintain or introduce a dual warehouse receipt system, chapter V should either be adopted in its current form or integrated with the contents of the main body of the MLWR. This type of system is more common in civil law countries, particularly those in South America, and involves the issue of two separate documents relating to the proprietary and security rights in the goods. On the other hand, States that wish to maintain or introduce a single warehouse receipt system should leave out chapter V in its entirety. This type of system is more prevalent and involves the issue of a single document relating to both title and security in the deposited goods.

#### **D. STRUCTURE**

25. The Model Law is organized into six chapters:

|             |                                                                       |
|-------------|-----------------------------------------------------------------------|
| Chapter I   | Scope and general provisions                                          |
| Chapter II  | Issue and contents of a warehouse receipt; alteration and replacement |
| Chapter III | Transfers and other dealings in negotiable warehouse receipts         |
| Chapter IV  | Rights and obligations of the warehouse operator                      |
| [Chapter V  | Pledge bonds]                                                         |
| Chapter VI  | Application of this Law                                               |

26. Chapter I, entitled “Scope and general provisions”, outlines the scope of application of the Model Law, placing particular emphasis on its applicability to both electronic and paper warehouse



receipts, and provides definitions for key terms used throughout the MLWR. Furthermore, this chapter contains provisions regarding party autonomy as well as the interpretation of the Law in respect of its international origin and the need to promote uniformity in its application.

27. Chapter II relates to the “Issue and contents of a warehouse receipt; alteration and replacement” and is divided into two sections. Section A deals with the issue and contents of warehouse receipts, establishing an obligation on the warehouse operator to issue a warehouse receipt upon request by the depositor, and enumerating the required information to be included in the warehouse receipt, as well as additional information which the warehouse operator may wish to include. Section B deals with the alteration of warehouse receipts after the date of issue, the replacement of warehouse receipts in the event of loss or destruction and the change of medium of a warehouse receipt from paper to electronic or vice versa.

28. Chapter III deals with “Transfers and other dealings in negotiable warehouse receipts” and is divided into four sections. Section A outlines the requirements for the transfer of both paper and electronic negotiable warehouse receipts. Section B then explains the rights of transferees, including the additional rights of transferees with “protected holder” status. Section C pertains to the third-party effectiveness of security rights in negotiable warehouse receipts. Finally, Section D contains provisions regarding representations and guarantees made by the transferor to the transferee.

29. Chapter IV sets out the “Rights and obligations of the warehouse operator” including the duty of care, the duty to keep goods separate and the obligation to fully or partially deliver goods upon instruction by the holder, as well as excuses from this delivery obligation. This chapter also contains provisions relating to the warehouse operator’s lien on stored goods, the possibility of splitting a warehouse receipt, and the termination of storage by the warehouse operator. The rights and obligations of the warehouse operator stipulated in this chapter are limited to the extent required for the functioning of the Model Law.

30. Chapter V on “Pledge bonds” is an optional chapter intended only to be adopted by enacting States that seek to implement a dual warehouse receipt system. This chapter deals with several matters pertaining to pledge bonds, including their issue and form, their effect and transfer, and the rights and obligations of the warehouse operator. These provisions are presented separately from the rest of the Model Law in order to facilitate use of the MLWR by States that do not wish to adopt a dual warehouse receipt system; however, States that do wish to implement such a system may consider integrating the content of this chapter with chapters I through IV of the Model Law.

31. Chapter VI on “Application of this Law” contains provisions relating to the entry into force of this Law as well as the repeal and amendment of other laws in the enacting State.

## **E. TYPES OF WAREHOUSE RECEIPT SYSTEMS: THE SINGLE AND THE DUAL FORMAT**

32. Recognizing that jurisdictions have generally adopted one of two approaches with regard to the format of warehouse receipts, referred to as single and dual warehouse receipts, the Model Law embraces both approaches. It does so by suggesting the optional chapter V on “Pledge bonds” for enacting States that seek to reform or implement a system of dual warehouse receipts.

33. In a dual receipt system, the warehouse operator issues a warehouse receipt and a pledge bond. The pledge bond grants its holder a security right in the goods covered by the warehouse receipt, and the rights of the warehouse receipt holder are subject to the rights of the pledge bond holder. In a single receipt system, only one warehouse receipt is issued for the deposited goods.

34. The law and practice concerning single and dual warehouse receipts can be divided into four groups:

- Countries that have adopted single warehouse receipts, including common law jurisdictions and some civil law jurisdictions;
- Countries that have adopted dual warehouse receipts, mostly in South America, where the two instruments are generally referred to as the certificate of deposit ("*certificado de depósito*"), and pledge bond ("*bono de prenda*") or warrant ("*warrant*");
- Countries that allow for both single and dual warehouse receipts; and
- Countries that have adopted dual warehouse receipts as the general rule, but single warehouse receipts for certain commodities and/or exchange markets.

## F. ELECTRONIC WAREHOUSE RECEIPTS

35. The MLWR is technology-neutral. It applies to both electronic and paper-based warehouse receipts. Thus, the MLWR acknowledges the increasing relevance of EWRs in many jurisdictions where their use is already widespread in commercial transactions. Moreover, it provides guidance to legislators and regulators aiming at adapting the legal/regulatory framework to facilitate the transition to EWRs with enabling provisions and legal certainty for the different innovative models operating in the market. It does not preclude a State from implementing a system only for electronic warehouse receipts, which would however necessitate some changes in the law, especially to eliminate the provisions that exclusively apply to paper receipts.

36. The importance of EWRs in modern commercial practice is recognized by the MLWR and signaled by its drafting in a technology-neutral manner. In the first provision of the MLWR (art. 1), delimiting its scope of application, warehouse receipts are defined for the purposes of the Law as "an electronic record or a paper document" when certain conditions are met (art. 1, para. 2).

37. There is no separate definition of an EWR for the purposes of the MLWR. An EWR is simply a "warehouse receipt" issued as an electronic record. Thus, the MLWR includes in article 2 the definition of "electronic record" pursuant to the MLETR: "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." The notion of EWR is then based on the concept of "electronic record" and on the acknowledgement of functional equivalence for writing, signature or original as per the UNCITRAL Model Law on Electronic Commerce<sup>7</sup> (the "MLEC"), articles 6, 7 and 8. Although the MLWR does not provide these definitions, its provisions are based on them. For jurisdictions that have neither adopted domestic rules inspired by the principles of technology neutrality and functional equivalence that may be relevant for warehouse receipts,<sup>8</sup> nor incorporated the MLETR into the national legal system, there may be a need to include these definitions in the rules complementary to the direct implementation of the MLWR. Alternatively, such jurisdictions need to find the most adequate way to coordinate the relevant provisions on EWRs with these principles as enshrined in other general or special legislation, in order to implement a fully operational enabling legal framework for EWRs. Jurisdictions that have already completed these reforms may decide not to implement those provisions if their existing domestic legal system already provides for sufficient rules to achieve a functionally equivalent result.

38. The technology-neutral approach is equally adopted in chapter V (Pledge bonds) that is suggested for enacting States that seek to maintain a system of dual warehouse receipts consisting

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<sup>7</sup> United Nations Publication, Sales No. E.99.V.4.

<sup>8</sup> Incorporating, in particular, the UNCITRAL Model Law on Electronic Commerce (MLEC) or the UNCITRAL Model Law on Electronic Signatures (MLES) (United Nations publication, Sales No. E.02.V.8), or ratifying the UN Convention on the Use of Electronic Communications in International Contracts (United Nations publication, Sales No. E.07.V.2).

of a warehouse receipt and a pledge bond. Solely where EWR-specific solutions are needed, there are provisions specifically addressing EWR-related issues (arts. 3; 13, para. 2; 14; 15, para. 2; 19, subpara. (b); 32, paras. 2 and 3, subpara. (a)). These EWR-specific references are necessary to render legal rules operational in any EWR model, whereas the MLWR does not provide for technology-specific solutions. The key notion of “control” (art. 3), which is instrumental in the application of chapter III provisions on transfer and other dealings in negotiable warehouse receipts, illustrates one such EWR-specific provision.

39. The MLWR is also agnostic with respect to the EWR model. There are no model-specific specifications in the provisions of the Model Law. Provisions are drafted not only taking into consideration currently existing models for issuance and transfer of EWRs, but also with sufficient flexibility to embrace future innovative practices, new market solutions and emerging business models. In this regard, the MLWR aims to provide a simple model for legislation in the enacting jurisdiction, which is expected to be supplemented by complementary rules.

40. At present, primary technological models operating in the market belong to two main categories: models based on registries and models operating as token-based systems. Various sub-models can be found within each category, be they single, centralized or multiple registries, general or sector-specific registries, public or private registries, etc. Moreover, it must be noted that in many jurisdictions, EWR models for issuance, transfer or encumbrance are closely integrated in, or interface with, commodity exchange-trading and clearing platforms in a broader electronic ecosystem for trade and finance. Thus, EWR models belong to and integrate into the broader trading infrastructure operating in a State or at the multinational level. Such integrative structural models may require special caution to ensure coordination and consistency of the entire system. The MLWR does not preclude any of these models. All these structural and organizational aspects should be addressed in complementary rules, if so decided.

41. Both primary categories of EWR models (registry-based models and token-based models), in their current forms, free warehouse receipts from the paper medium and are data-based, albeit with some structural and operational differences. These differences may require further guidance for courts to interpret and apply the MLWR provisions in each model and for parties to develop, implement and use law-compliant models and solutions.

42. Registry-based models replace the actions of issuance, transfer, alteration or split of the warehouse receipt with registrations. Many jurisdictions are familiar with electronic securities registry models operating on the basis of “account entry” or “book entry”. As in these electronic securities registers, it should be noted that they do not, at least in their current design and operation, fully work for bearer warehouse receipts. The logic of registry models, where all actions related to any warehouse receipt are performed by a book entry or a ledger entry, commonly entails the designation of the named person in the entry. Although EWRs in a registry model can, theoretically, be issued to bearer, in the circulation of the EWRs the holder is to be identified in the registry system as the person in possession. Therefore, registry-based models are not, in principle, well suited to the development of models intended to operate for bearer warehouse receipts. Additionally, these technological solutions can easily allow the design of a management system for electronic registries that discriminates and filters the identification of the person depending on the purpose. Identification can be rendered possible for different purposes. For instance, it may be available for regulatory purposes such as anti-money laundering, but blocked for commercial purposes permitting issuance and endorsement to bearer. Furthermore, nothing in the MLWR would preclude such solutions provided that their operation is aligned with the transfer rules and the rights of the parties. Nevertheless, so far, alternatives to typical registry-based models, such as token-based systems, seem to be better designed for bearer warehouse receipts.

43. Complementary rules may be adopted in an implementing jurisdiction to set out specific requirements for the establishment and the operation of any registry for EWRs. The MLWR does not

include these organizational, structural or operating rules for registries. Special care should be taken to prevent these complementary requirements from altering the substantive rules applicable to warehouse receipts as per the MLWR as implemented in the legal system. Detailed guidance on the preparation of complementary rules for a central registry of warehouse receipts can be found under Part IV, Section D, below.

44. As previously explained, in a registry-based model, all actions with respect to the warehouse receipt life cycle and any situation affecting the warehouse receipt are to be performed and need to be “interpreted” as (the functional equivalents of) the corresponding account entry in the register. Should the issuance of the warehouse receipt be the initial book entry, the annotation should include the mandatory information and may include the additional information pursuant to the MLWR. The alteration of a warehouse receipt should be understood as a subsequent entry completing the previous entry. The transfer of the warehouse receipt is deployed as a chain of successive entries with respect to the relevant warehouse receipt. The split of the warehouse receipt is articulated as a split of the single entry into several. Interestingly, loss or destruction of an EWR in a registry is less plausible and much less probable. However, it could be equated with a mistaken deletion of book entries or the inability of the named person to control it. That inability may arise from technological obstacles or failures that prevent the named person from requesting the registrar to make an annotation of transfer, using its account for the intended actions, or accessing the registry for any purpose. Other than substantive issues related to the EWR under the MLWR, these situations of technical malfunctioning or system failure may lead to the liability of the operating registrar or other actors involved in the development or the functioning of the registry (developers, update providers, data providers, infrastructure providers, digital service providers, platform operators). None of these liability issues is addressed in the MLWR insofar as, and to the extent that, none is among the cases in which warehouse operator liability is provided for by the MLWR (arts. 9, para. 2; 10, para. 2; 11, para. 2; 14; 30).

45. In devising an EWR model, the key concept of control (art. 3) needs to be properly and effectively implemented. In a registry-based model, control is associated with reliable mechanisms that entitle the person in an exclusive manner to exercise its role as a holder vis-à-vis the registrar/register and be identified as the person in control with respect to the EWR. In practice, this control is essentially exercised through an account of the registered user in the platform or system enabling that user to request/execute actions to be annotated in the registry with respect to an EWR, or with any other simple or sophisticated method aimed at identifying (even with a pseudonym) someone as a person in control and enabling that person to perform or request certain actions. The person in control is a “holder” if provided with a password, private key or other reliable identification method (electronic or digital signature) that enables access to the register and relevant actions with respect to the EWR.

46. Registry models for EWRs have been initially described as centralized systems with a central operator in charge, as many in-operation electronic registry systems (for EWRs and for other purposes) are set up as centralized systems in multiple jurisdictions. However, this model does not preclude the deployment of distributed ledger technologies (DLT)-driven systems. Nothing in the MLWR precludes the deployment of blockchain- and other DLT-based models as a private system where only authorized users would be able to interact with the system for running EWR registries.

47. Yet the idea of “information contained in a document” that paper-based warehouse receipts assume for the purposes of circulation may be very differently articulated in EWR models. Thus, in a registry model, the different items of information to be included in an EWR might be materially recorded in different ledgers but uniquely linked and presented consistently in the displayed “electronic record” where necessary. Therefore, when the EWR is transferred, the information is not “sent” to the subsequent holder by passing the medium as in a paper document, but it is the access to the relevant information and the control over the relevant electronic record that is transferred to

the subsequent person in control. It is not relevant where the information is, but rather how it is exclusively controlled.

48. Registry models are familiar in most jurisdictions in various fields and for many purposes. They have been adapted to implement EWR models. Alternatively, token-based models have also been developed and deployed as a technological solution for EWRs. Unlike registry-based systems, token-based models are aimed at reproducing and, to a certain extent, emulating in an electronic environment the “circulation” of a conventional paper-based warehouse receipt under the new parameter of exclusive control. The issuance, transfer or encumbrance of the warehouse receipt are performed by the issuance, transfer or encumbrance of a token. A controllable electronic record embodies or represents the rights and the benefit of the obligation of the warehouse operator and is transferred by the change of control. The use of the term “token”, as a neutral notion in legal terms, is intended to avoid predetermining the different legislative and regulatory options taken by jurisdictions in regulating digital assets. The term itself – let alone the legal regime – is not harmoniously employed by countries and organizations. Some jurisdictions have proposed or enacted rules to govern those “tokens, digital assets, crypto assets” that are not subject to existing regulations or commercial laws (securities, bonds, chattel papers, electronic documents, transferable records, etc.). Under such models, EWRs operating as tokens might be excluded from these new regulations and logically subject to the MLWR-implementing legislation. Other policy options are, however, plausible. Token-based EWRs might be included into a comprehensive, general law on digital assets with specificities for each sub-category in special legislation. The MLWR neither precludes nor presumes any of these policy and legislative options to be chosen by the implementing States.

49. The MLWR works for token-based models of EWRs. The private key enables the holder to have control over the relevant EWR. Holding and transferring (exclusive) control allows parties to hold, transfer or perfect security rights in the EWRs. The private key, PIN or password for carrying out transactions (which only the holder knows) is stored in or linked to a wallet together with the public address. Therefore, the wallet allows keys to be stored and transactions to be carried out on behalf of the holder interacting in the blockchain or distributed system. This mechanism meets the requirement of establishing (exclusive) control of an EWR by the holder.

50. While the sequence of transfers is recorded and publicly available in the DLT system, holding and transfers are related to public addresses that do not directly identify the person (pseudonymity more than total anonymity).

51. Even though at present only the two previously described primary categories of EWR models (registry-based models and token-based models) are being used for EWRs, the fact that technological progress and business evolution can trigger the emergence and introduction of new models in the near future has not been disregarded. In the preparation of the MLWR, the extraordinary penetration of digital technologies in warehousing practices in many economies, and the remarkable emergence of fintech platforms, technology-intensive agricultural models and blockchain (DLT) solutions have been taken into consideration. In implementing the MLWR provisions and developing complementary rules, where necessary, legislators and regulators should be mindful of the risk of legal obsolescence in the face of rapid technological progress and seek to formulate solutions that are appreciated by the industry as market-sensitive as well as innovation-enabling.

## **G. FINANCING PRACTICES INVOLVING WAREHOUSE RECEIPTS**

52. Warehouse receipts represent the stored good. As a “document of title”, the goods may be used as collateral as a form of movable asset collateral through the warehouse receipt. In a broad sense, Warehouse Receipt Finance (WRF) refers to any financial product and solution which involves an encumbrance over the warehouse receipt that enables the lender to secure the repayment of a

loan or other obligation against the underlying goods. A lender may in practice manage a relatively diverse portfolio of financial products and solutions that involve taking encumbrance over the warehouse receipt. For the sake of simplicity, these may be distinguished between products that focus on the warehouse receipt as sole security, and financial products and solutions in which the warehouse receipt is just one of the assets encumbered.

53. A product that focuses on the warehouse receipt as sole security is typically known as WRF, but according to the type of financing arrangement, the nomenclature may vary:

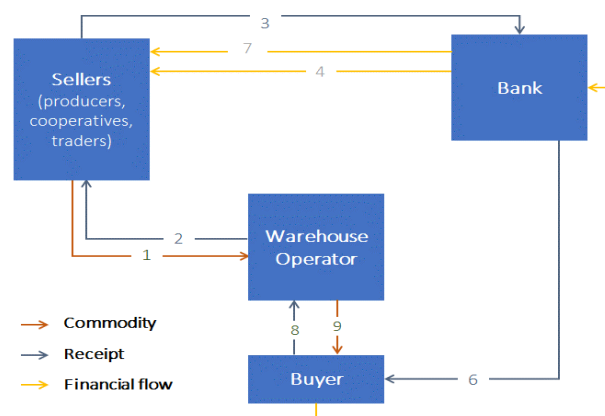
- When it is a depositor storing goods in a warehouse and receiving a portion of its value as a loan, the product may be known as warehouse receipt discounting, and in some countries as Haircut Finance (as the warehouse receipt is subject to a “collateral haircut”);
- When it is a supplier that has taken WRF against goods stored in the buyer's warehouse, the product may be known as supplier finance;
- When it is a buyer – e.g. a trader that aggregates goods, an exporter that exports goods, or an industrialist that processes or manufactures – that takes WRF against goods stored in its own warehouse, the product may be known as inventory finance;
- In parts of Africa, informal versions of WRF, usually offered by microfinance institutions against community food stocks held in community-based storage under dual lock custody, the product is known as warrantage;
- In the Islamic world, WRs may be used to support Shariah-compliant, or interest-free banking products, such as commodity *murabaha*.

54. Prominent financial products and solutions in which the warehouse receipt is just one of the assets encumbered include:

- Trade finance, in which the encumbrance of the WR may be paired with the assignment of the borrower's receivables, linked to a defined payment guarantee instrument (e.g. letter of credit), among other potential risk mitigation mechanisms, to support a cross-border transaction;
- Asset-based lending, in which the warehouse receipt is one of several movable assets that are encumbered, perhaps alongside other kinds of physical stock, equipment, receivables and bank account; and
- Borrowing base lending, in which the lender lends against the entire pool of the borrower's assets, immovable as well as movable, or a defined sub-set thereof.

55. Notwithstanding all the possible variations, “classic WRF” – generally, in the form of the warehouse receipt discounting product noted above – is typically depicted as involving the following flow:

1. Borrower deposits goods at warehouse
2. Warehouse operator issues warehouse receipt
3. Warehouse receipt is encumbered as collateral
4. Bank disburses loan against warehouse receipt
5. Buyer pays sales proceeds to bank
6. Bank transfers warehouse receipt to buyer
7. Bank remits surplus to seller after satisfying the owed obligation
8. Buyer presents WR to warehouse operator
9. Warehouse operator releases goods to the buyer



56. Looking beyond bank-originated finance, warehouse receipt assets may also be securitized and sold on into the capital markets.

57. On commodity derivative exchanges, warehouse receipts are typically classified as an eligible type of collateral for use as initial margin against a derivative position. Should the seller's position on a physically-deliverable commodity derivative instrument be held open through to the delivery period, a warehouse receipt may be submitted by the seller to the exchange, typically one issued by the operator of one of its designated delivery warehouses, which will then be transferred from seller to buyer to fulfil the settlement process.

58. For commodity spot exchanges, which are prominent in Africa and parts of Asia and Latin America, the warehouse receipt not only fulfils delivery functions in settlement of exchange-traded contracts, as above, but also is required as the prerequisite for a seller to trade through the exchange, providing pre-trade assurance that the goods offered for sale are already in the warehouse, quality- and quantity-specified and guaranteed.

59. In light of the above, some of the world's largest and most sophisticated WRS are operated by or in association with commodity exchanges, for example LMEsword, and the Johannesburg Stock Exchange's (JSE) Electronic Silo Certs.

60. When the warehouse receipt is used in a commercial transaction, whether against credit or in a trading position, the prospective purchaser or lender will consider a range of risks:

- Legal Risk: does the legal framework permit the creation, perfection and enforcement of security rights?
- Custody Risk: do the warehousing arrangements secure the presence and value of the collateral?
- Credit Risk: will the counterparty have willingness and capacity to fulfil their obligations?
- Market Risk: will there be a buyer willing to purchase the goods?
- Price Risk: will the value of the goods be sufficient to fulfil obligations (if this is required)?

61. The MLWR, which aims to strengthen and harmonize warehouse receipt laws around internationally-agreed best practice, enhances the mitigation of both legal and custody risk, and thus can contribute to increased worldwide adoption of WRF and, more broadly, the growing use of the warehouse receipt as collateral to drive higher volumes of commodity trade and finance at lower risk.

62. In the mitigation of both legal and custody risk, the MLWR is expected to be an enabler of cross-border trade and finance.

- Lenders may leverage an increasingly harmonized legal framework across jurisdictions to build cross-border WRF portfolios.
- Cross-border harmonization may also drive increased use of warehouse receipt securitization to access finance through capital markets. This may bring disproportionate benefit for small-scale economies which may otherwise struggle to build sufficient scale from the national market alone to meet the scale and structure requirements of capital market institutions.
- Finally, harmonization may also accelerate the emergence of new cross-border commodity exchange markets, and associated clearing and settlement mechanisms, by enabling the rights of buyers and sellers in different jurisdictions to enjoy a common and consistent legal foundation so that the legal framework, including the commodity exchange rulebook, can be applied without discrimination or differentiation according to counterparty domicile or the location of the stored goods.

63. The MLWR contains a range of provisions which provide lenders with confidence that the enforcement rights enshrined in law can be realized in practice, allowing them recourse in the event of non-performance by the borrower or the warehouse operator. These provisions include defining the status of the warehouse receipt as a “document of title”, standardizing the content of the warehouse receipt, setting out the rights and obligations of the parties to a warehouse receipt, and specifying the modalities for issuance and transfer of the warehouse receipt.

64. Mitigation of custody risk entails the bank evaluating the capacity of the warehouse operator to secure the presence and value of the collateral, or otherwise provide compensation for loss or damage that may take place while the goods are in storage. The MLWR incorporates a range of provisions that specify the obligations of the warehouse operator that issues the warehouse receipt, including a duty of care and a guarantee of the quality and quantity of goods described in the receipt. In practice, lenders typically utilize one or both of two approaches to reinforce the custody risk-mitigation provisions enshrined in the MLWR.

65. Lenders may privately contract with a “collateral manager”, a business which specializes in taking custody, controlling and preserving the condition of warehouse receipt collateral. This may take place through a tripartite agreement involving the lender, borrower and collateral manager, known as a collateral management agreement (CMA). In general, the CMA involves a field warehousing arrangement in which the collateral manager takes control over the borrower’s own warehouse. The warehouse receipts issued under this arrangement tend to be non-negotiable.

66. Lenders may also utilize a WRS, in which the regulatory aspects of WRS law – not included in the MLWR (see Part II, A.) – typically define eligibility criteria for warehouse operators, including operational capability and capital adequacy. In practice, even under WRS, and especially when the WRS is nascent, lenders often wish to enter into private agreement with the warehouse operator and work only with warehouse operators that meet the lender’s custom eligibility criteria. The warehouse receipts issued under this arrangement tend to be negotiable.

67. WRS is often linked with public warehouses, i.e. warehouses open to any member of the public to deposit goods (irrespective of whether the warehouse is owned by public or private sector).



The theory is that, for smaller-scale actors, which may struggle to fund the cost of construction, purchase or leasing of a proprietary warehouse, they can share the costs of warehousing with other depositors of a similar profile. This reflects historical evolution in several relatively large economies, particularly when government has made major investment in storage infrastructure.

68. In smaller economies, public warehousing has usually been established only in sites with particularly high throughflow such as ports and the largest commercial centres. Often such warehousing may be integrated into the operations of logistics, shipping and forwarding businesses in which case it is not offered as a stand-alone service. In practice, it has been difficult to establish public warehousing outside these locations, in particular in rural areas close to farmers, who tend to be the weakest actor in the value chain, with the highest unmet financing need. Commodity exchanges may in practice be best positioned to open up public warehouses. However, in commodity exchange delivery warehouses, WRF may be available only to those parties also willing to trade through the exchange. This may be a limiting factor. In recent developments in some countries, government agencies such as commodity marketing boards are also offering public warehousing.

69. Generally, though, efforts in smaller-scale economies to promote WRF outside the ports and commercial centres may be structured around private and field warehousing arrangements. Common examples include larger buyers offering storage services to their suppliers and farmer organizations (FOs) offering storage services to their farmer members. The warehouse owner offers these services as it helps to secure more supply than their own working capital and credit lines would allow. The depositor stores the goods and self-finances via WRF. When the buyer/FO has more cashflow later in the season, the goods are bought from the depositor. Experience shows that a lender may in some circumstances trust the buyer or FO as the warehouse operator to issue the WRs that the lender then finances. However, sometimes the lender may require an independent warehouse or collateral manager to control the goods and issue the warehouse receipts. The latter is always the case if the warehouse owner wishes to borrow using the same arrangement.

## H. CONFLICT OF LAWS ISSUES

70. The Model Law does not include an article that would determine the law applicable to various aspects of transactions with warehouse receipts, such as the proprietary effect of transfers. At its Fifth Session, the UNIDROIT Working Group considered a Note on Conflict of Laws Issues that examined various aspects of law applicable to warehouse receipts, their issuance, rights and obligations of the issuer, transfers and security rights. The Working Group decided for a brief explanation of the relevant issues, without formulating any recommendations, to be included in the Guide to Enactment. This Section provides a summary of the relevant issues.

71. Warehouse receipt laws do not typically include conflict of laws rules. Transfers of warehouse receipts have traditionally been domestic and completed by delivery of a paper document. Thus, the general connecting factor of *lex rei sitae* is sufficient for such transactions. However, the digitalization of records and establishment of platforms for EWRs opens greater access to cross-border trading. Moreover, digitalization raises novel questions that the general approaches determining the applicable law according to *lex rei sitae* may not be able to answer satisfactorily.

72. The mutual rights and obligations of a warehouse operator and the depositor are provided for in the terms and conditions of warehouse receipts. These terms and conditions typically establish the governing law for disputes arising out of the storage agreement as well as which courts have jurisdiction to adjudicate disputes.

73. Warehouse receipts raise several questions of the applicable law, including in the following situations relevant to the MLWR:

- the law applicable to the validity of the warehouse receipt;

- the law applicable to the enforcement of a right of the holder as against the warehouse operator;
- the law applicable to transfers of warehouse receipts, including whether a person satisfied the requirements to qualify as a protected holder; and
- a conflict between the rights of a protected holder of the receipt and a right of a person with an interest in the goods.

74. The following briefly summarizes how these issues may be dealt with in domestic laws.

75. For warehouse receipts, the law chosen by the issuer may determine whether the issued record/document is a warehouse receipt. Accordingly, the issuer may select the law of a foreign country, if, for instance, its domestic law does not recognize warehouse receipts as negotiable documents of title. In any case, a transferee of a receipt would be able to determine “from its face” the applicable law. Absent a choice, the law of the location of the issuer could be the governing law for this aspect.

76. The approach to determine the applicable law for the preceding issue may be the same for enforcement of the issuer’s obligation to deliver the goods. The same law is expected to govern the rights and obligations between the issuer and a secured creditor. This is already the approach of article 96 of the MLST under which the law governing the rights and obligations of an issuer of a negotiable document and the grantor of a security right is also the law that determines the conditions under which the security right may be invoked against the issuer.

77. Generally, warehouse receipts recognized as negotiable documents of title are treated as movable assets, so that the law of the location at the time of the transfer determines the effectiveness of that transfer. Article 85 of the MLST provides for the location of an asset as the connecting factor for the law that governs the creation, third-party effectiveness and priority of a security right in a tangible asset.

78. Electronic warehouse receipts do not have a location. Location of the transferor may establish a connecting factor as the transferee should be able to determine the relevant location at the time of transfer. However, this may be the case for inter-personal transactions, but not necessarily so for exchange-based dealings. An alternative would be the law chosen by the issuer.

79. The law governing the rights of a protected holder should govern any conflict against a buyer of goods or a person with a security right in the goods. MLWR provides a substantive rule resolving such conflicts in article 14, paragraph 3.

### III. ARTICLE-BY-ARTICLE COMMENTARY

#### CHAPTER I

#### SCOPE AND GENERAL PROVISIONS

##### Article 1 – Scope of application

80. Under article 1, the MLWR applies to warehouse receipts, either in the form of an electronic record or paper document. This reflects the intention to design a medium-neutral instrument aimed to assist enacting States in modernizing and replacing the existing paper-based legislation (see art. 2, para. 2 for definition of electronic record that aligns with the UNCITRAL MLETR).

81. The MLWR does not apply to all electronic records or paper documents simply labeled “warehouse receipt.” Rather it provides for two essential elements that must be present for a document to be considered a warehouse receipt for purposes of the MLWR. This approach consolidates the definition of warehouse receipt with the essential elements of a warehouse receipt into one comprehensive provision. A paper document or electronic record that does not meet the requirements of article 1, paragraph 2 would not be rendered null and void but would rather be subject to some other law.

82. Under article 1, paragraph 2, the first essential element is that the warehouse receipt is issued and signed by a warehouse operator that acknowledges holding goods on behalf of the holder (see art. 2, para. 3 for definition of holder). This means that a warehouse operator must issue the warehouse receipt, identify itself as the party holding the goods on behalf of the holder, and authenticate the document by adding its signature. The signed acknowledgement reflects the warehouse operator’s duty to the holder to preserve the quantity and quality of the goods in its custody (see art. 23 on duty of care).

83. Second, the warehouse receipt must include a promise by the warehouse operator to deliver the goods to the holder. That is, in addition to safeguarding the goods, the warehouse operator must also deliver them to the holder. The warehouse operator’s delivery obligation is triggered when the holder surrenders possession or control of the warehouse receipt (see art. 26, para. 1, subpara. (b)).

84. Because the warehouse operator’s delivery obligation consists of an undertaking to make the goods available under certain conditions, it might appear to apply to field warehousing where a collateral manager controls stock on behalf of a financier, issues a non-negotiable warehouse receipt as a record of the stock, and then releases the stock to the borrower on the instruction of the financier. However, in those situations, the collateral manager would issue a non-negotiable receipt to which several provisions of the MLWR (e.g. on transfers) would not be applicable.

##### Article 2 – Definitions

85. The MLWR provides for definitions of key terms in article 2 that supplement the general definition of warehouse receipt in article 1.

##### *Depositor*

86. The first subparagraph of article 2 provides a definition of depositor, which is “a person who deposits goods for storage with a warehouse operator.” The person depositing goods is not always the same as the holder; the MLWR makes this important distinction clear by providing separate definitions. The identity of the depositor must be included in a warehouse receipt (see art. 9, para.

1, subpara. (e)). The depositor may be a logistical company or an agent of a financial institution that takes the warehouse receipt as collateral.

#### *Electronic record*

87. The definition of electronic records (see art. 2, para. 2) draws from the UNCITRAL MLETR. The purpose is to provide a foundational underpinning for EWRs (see art. 1, para. 2).

#### *Holder*

88. The definition of holder contains separate subparagraphs outlining what constitutes “holder” for purposes of electronic negotiable warehouse receipts, paper negotiable warehouse receipts to the order of a named person, paper negotiable warehouse receipts issued to a bearer, and non-negotiable warehouse receipts. Holder is one of the key concepts in the MLWR, identifying the person who is entitled to delivery and could satisfy the additional conditions to become a protected holder (see art. 17). For a person to become a holder, that person must have some association to the receipts, such as being an endorsee of the receipt.

#### *Negotiable warehouse receipt*

89. The fourth paragraph defines a negotiable warehouse receipt as one issued to either the order of a named person or to bearer. A warehouse receipt that satisfies either of these conditions may be transferred by delivery/endorsement in the case of a paper warehouse receipt (see art. 15, para. 1) and by change of control in the case of an EWR (see art. 15, para. 2). Only a negotiable warehouse receipt may confer the status of a protected holder under article 17.

#### *Non-negotiable warehouse receipt*

90. The MLWR distinguishes a negotiable warehouse receipt from a non-negotiable warehouse receipt in that the former may be transferred by delivery/endorsement or change of control, whereas the latter may be transferred by assignment. This distinction is reflected in the definition of non-negotiable warehouse receipt, which is “issued in favor of a named person only.” A holder of a non-negotiable receipt cannot acquire the same rights as a protected holder; its rights may be subordinated to the rights of another person.

#### *Protected holder*

91. The definition of protected holder refers to article 17, paragraph 1, which outlines the various requirements that must be met for a person to be considered a protected holder. A transferee and a secured creditor may satisfy those requirements and acquire the corresponding rights, including the highest protection against competing claims.

#### *Storage agreement*

92. Paragraph 7 provides a definition of storage agreement, which is entered into between a warehouse operator and a depositor. Under paragraph 7, the storage agreement “sets out the terms on which the warehouse operator agrees to store goods.” The fact that the storage agreement sets out the terms by which the goods are held will be of primary interest to the holder of a warehouse receipt. In most cases, the terms of the storage agreement are contained in the warehouse receipt (see art. 8 on incorporation of storage agreement in the warehouse receipt).

#### *Warehouse operator*

93. Paragraph 8 defines warehouse operator as “a person who is in the business of storing goods for other persons.” This definition of warehouse operator effectively excludes warehouse operators

that are not in the business of providing third-party storage services and/or that work on a gratuitous basis.

### **Article 3 – Form of warehouse receipts**

94. Article 3 contains a statement on the possibility to issue warehouse receipts in paper and electronic form on an equal footing, thus implementing a medium-neutral approach. The use of the disjunctive “or” implies a prohibition of issuing warehouse receipts in mixed medium (i.e., partly on paper and partly in electronic form).

### **Article 4 – Party autonomy**

95. Enacting States have two options with respect to party autonomy under the MLWR.

96. Option A provides that “[p]arties may not derogate from or vary by agreement any provision of this Law.” This option thus makes all the provisions of the MLWR mandatory. That does not mean that the parties would not be able to deal with other issues in a storage agreement or the warehouse receipt.

97. Option B is based on the MLST (see art. 3). Paragraph 1 of Option B is intended to reflect the principle that, except for the provisions listed in paragraph 1, parties are free as between themselves to vary by agreement the effect of the provisions of the MLWR. The mandatory provisions relate to matters that affect the rights of third parties or reflect a fundamental policy of such importance that their application should be mandatory. Enacting States are invited to choose which provisions may not be derogated from.

98. Paragraph 2 of Option B reiterates the general principle that an agreement between two parties cannot affect the rights of a third party.

### **Article 5 – Interpretation**

99. Article 5 is inspired by article 5 of the MLST. It is intended to provide guidance in the interpretation of the MLWR and to limit the extent to which the MLWR, once incorporated in national law, would be interpreted only by reference to concepts of national law.

100. The purpose of the reference to the international origin of the MLWR is to draw the attention of any person that might be called upon to interpret and apply a national law implementing the MLWR to the fact that its provisions, while part of a national law, should be interpreted and applied in a manner that will promote uniformity among all enacting States. Unlike the MLST, article 5 does not include a reference to “the observance of good faith,” to not suggest a principle that might not be considered familiar to many jurisdictions as a statutory principle for interpretation. The MLWR also does not include a separate paragraph on interpretation in “conformity with the general principles on which the law is based”, given that such principles were not specified in the Model Law.

**CHAPTER II**

**ISSUE AND CONTENTS OF A WAREHOUSE RECEIPT; ALTERATION AND REPLACEMENT**

**Section A. Issue and Contents of a Warehouse Receipt**

**Article 6 – Obligation to issue a warehouse receipt**

101. Article 6 outlines the obligation of the warehouse operator to issue a warehouse receipt. Paragraph 1 conditions this obligation on the depositor requesting that a warehouse receipt be issued. Notably, the reference in paragraph 1 to “after taking possession of the goods” covers situations of goods in transit and goods in a fixed location.

102. Paragraph 2 separates the obligation of the warehouse operator to issue a warehouse receipt from the validity of the storage agreement. In other words, the fact that a warehouse receipt has not been issued cannot be used as grounds to invalidate the terms and conditions of the storage agreement.

**Article 6 bis – Electronic warehouse receipt**

103. Article 6 bis sets forth the requirements for issuing an electronic warehouse receipt under a medium neutral approach. It is based on article 10 MLETR and is complemented by article 15, paragraph 3, on the notion of “control”.

**Article 7 – Representations by the depositor**

104. Article 7 provides for representations of the depositor at the time of deposit, which are contained in subparagraphs (a) and (b).

105. Subparagraph (a) provides that the depositor represents that it has authority to deposit the goods. Subparagraph (a) does not require the warehouse operator to engage in the costly due diligence of verifying that the depositor is the lawful owner of the goods and has the right to deposit them.

106. Similarly, subparagraph (b) provides that the depositor represents that the goods are free of any rights or claims of third parties except as notified to the warehouse operator. Subparagraph (b) reduces the due diligence requirement that the warehouse operator determine whether the goods are encumbered by some third-party claim, such as those by a secured creditor, judgment creditor or tax authority. It effectively requires the depositor to disclose the existence of such claims to the warehouse operator. If so, the operator may accept such goods and note the existence of those claims on the receipt.

**Article 8 – Incorporation of storage agreement in the warehouse receipt**

107. Article 8, paragraph 1 provides that a warehouse receipt is taken by operation of law to include all terms of the storage agreement. Paragraph 2 determines that the express terms of the warehouse receipt prevail over any inconsistent term of the storage agreement. In other words, a transferee takes the warehouse receipt subject to the terms of the storage agreement, so long as they do not conflict with an express term of the warehouse receipt.

108. Potential transferees of warehouse receipts should review the terms of the storage agreement before agreeing to any transfer (see art. 9, para. 1, subpara. (l) on duty of warehouse operator to disclose a copy of the storage agreement to potential transferees on demand).

#### **Article 9 – Information to be included in a warehouse receipt**

109. Article 9 lists the information that must be included in a warehouse receipt, clarifies the effect of any incomplete or incorrect statement of information, and provides a rule addressing situations where a negotiable warehouse receipt does not list the name of the person to whose order it is issued.

110. Paragraph 1, in subparagraphs (a) through (l), lists the information that must be included in a warehouse receipt, beginning with the denomination as “warehouse receipt” in subparagraph (a). The MLWR provides for several rules specific to transfers and other dealings with negotiable warehouse receipts (see ch. III). Moreover, the application of subparagraphs (b) and (c) of article 9 depends on whether the warehouse receipt is negotiable or non-negotiable. A negotiable warehouse receipt, for instance, must include the name of the person to whose order the receipt is issued or a statement that it is issued to bearer (see subpara. (b)). Subparagraphs (d) through (i) require an indication of the name and address of the depositor and the warehouse operator, a description of the goods and their quantity, an indication of the existence of any rights of third parties to the goods notified by the depositor to the warehouse operator pursuant to article 7, subparagraph (b), the fixed period of storage (if any), and the place where the goods are stored. This information reflects the terms and conditions of the storage agreement. Subparagraphs (j) through (l) require the warehouse receipt to contain a unique identification number, an indication of the date of issue and date of the storage agreement. The unique identification number may include any combination of numbers that provide a unique identification. Notably, subparagraph (l) provides that the warehouse operator must also make a statement on the warehouse receipt that a copy of the storage agreement will be made available to potential transferees on demand (see art. 8 on the relationship between warehouse receipt and storage agreement).

111. A warehouse receipt that is issued need not contain any of the mandatory information listed in paragraph 1 in order to qualify as a warehouse receipt so long as it satisfies the “essential elements” of a warehouse receipt in article 1 of the MLWR. However, a warehouse receipt that omits any of this mandatory information is unlikely to circulate on the market. Under paragraph 2, the effect of an incorrect or incomplete statement of information does not invalidate the warehouse receipt, which could negatively impact the rights of subsequent holders, but rather exposes the warehouse operator to liability for any losses proximately caused by such incorrect or incomplete statement. The MLWR thus places the obligation on the warehouse operator, as issuer, to issue a warehouse receipt that contains correct and complete information.

112. To increase predictability, paragraph 3 addresses situations where a warehouse receipt does not include the information required by paragraph 1, subparagraph (b) or (c), in which case it is presumed to be a negotiable warehouse receipt that is issued to bearer.

#### **Article 10 – Additional information that may be included in a warehouse receipt**

113. Article 10 lists additional, non-mandatory information that may be included in a warehouse receipt, clarifies the effect of any incorrect statement of information (identically to art. 9, para. 2), and addresses situations where a warehouse receipt covers fungible goods but does not state the quality of the goods.

114. Paragraph 1 provides that a warehouse operator may include any other information in a warehouse receipt, including (but not limited to) the name of the insurer, if any, who has insured

the goods, the details of the insurance policy covering the goods and the insured value (see subpara. (a)); 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 (see subpara. (b)); the quality of the goods (see subpara. (c)); and, if the goods are fungible, whether the goods may be commingled (see subpara. (d)). If applicable, inclusion of such non-mandatory information is encouraged, but its omission does not expose the warehouse operator to any liability, as in the case of omission of the mandatory information under article 9.

115. Under paragraph 2, the effect of an incorrect statement of the information does not invalidate the warehouse receipt, but rather renders the warehouse operator liable for any losses proximately caused by such incorrect statement (similarly to art. 9, para. 2).

116. To increase predictability, paragraph 3 provides that if a warehouse receipt covers fungible goods but does not state their quality, the goods are presumed to be of average quality.

### **Article 11 – Goods in sealed packages and similar situations**

117. Article 11 provides rules governing situations where the warehouse operator may not have a practicable or commercially reasonable means to describe the type, quantity and quality of the goods itself because they are sealed in packages or some other similar condition exists which makes their description impractical or commercially unreasonable.

118. In such cases, the warehouse operator may describe the goods in accordance with information provided to it by the depositor (see para. 1, subpara. (a)) or, 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, and that the warehouse operator otherwise has no knowledge of the contents or condition of the contents of the package (see para. 1 subpara. (b)).

119. Paragraph 2 releases the warehouse operator from liability for any losses suffered by any person caused by misdescription of the goods, if the operator describes the goods in accordance with paragraph 1. However, liability for misdescription can be established if the warehouse operator is found to have known or have had reasonable grounds to believe that the description was false or misleading.

## **Section B. Alteration and Replacement**

### **Article 12 – Alteration of a warehouse receipt**

120. Article 12 discourages the risky practice of issuing negotiable warehouse receipts with “blanks.” As between the warehouse operator (the issuer) and a subsequent holder, the risks should fall on the former, which is the approach of article 12. In such cases, any unauthorized insertion will be effective against the warehouse operator, so long as the subsequent holder has no knowledge of the lack of authorization at the time that person becomes the holder. The provision applies equally to paper and electronic negotiable warehouse receipts.

121. Alteration of a warehouse receipt under an EWR registry model is based on the logic of the “chain of successive entries”. If certain non-mandatory information is not included in the initial entry of an EWR (“a field in a negotiable warehouse receipt is left blank,” art. 12), it can be subsequently inserted. This gap-filling action is carried out by annotating a successive entry (authorized by the warehouse operator) with the relevant information. The annotation will be effective as to subsequent holders, and consequently, to ulterior entries, provided that it is authorized or the subsequent holder has no knowledge of the lack of authorization. An authorizing mechanism can easily be implemented in electronic registries with a simple communication system enabling the warehouse operator to be



informed about any alteration and authorize it. Similarly, non-authorized changes can be either technically impossible, by designing the registry system not to make changes unless authorized, or by automatically notifying the subsequent holder about lack of authorization, such as by push notifications or other notices.

122. As an alternative to authorization mechanisms, EWR systems can be designed to enable “dynamic/automatic” updates of certain items of information. Such data might be gathered from selected sources, oracles, or interconnected devices (with IoT solutions). While an authorization mechanism by the warehouse operator is clearly compatible with the integrity requirement, it may be discussed how these possible automatic mechanisms that render EWR dynamic meet this requirement. The criterion for assessing integrity should be whether information contained in the EWR, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display. Therefore, it is crucial to ensure that an authorization mechanism is in place. As in the deployment of smart contracts, a prior selection of “authorized oracles” inputting updates into the EWR, a pre-selection of a set of criteria enabling an automated verification of an authorized change, or the use of algorithmic assistants entrusted with the task of “authorizing” proposed changes, are among the possible innovative solutions to be developed by the industry.

### **Article 13 – Loss or destruction of a warehouse receipt**

123. Article 13 governs loss or destruction of a warehouse receipt by providing the holder with the right to request a replacement receipt, and if unsuccessful, apply to the court for an order that the warehouse operator issue a replacement warehouse receipt. Article 13 also provides for specific rules with respect to loss of EWRs based on the concept of control, as well as the form of a replacement warehouse receipt.

124. Paragraph 1 recognizes the legality of the well-established commercial practice of warehouse operators making delivery when they are satisfied that the purported holder is the person entitled under a missing or destroyed warehouse receipt. Paragraph 1 lists the items that the purported holder must present to the warehouse operator in order to obtain a substitute warehouse receipt. They consist of proof of the holder’s entitlement to the warehouse receipt and such indemnity in relation to the issue of the replacement warehouse receipt (and security in support of that indemnity). Acting without a court order, the warehouse operator remains liable on the original negotiable warehouse receipt, and, to avoid conversion liability, paragraph 1 provides the warehouse operator with the right to insist that the purported holder provide an indemnity bond or other indemnity.

125. Paragraph 2 provides additional clarity with respect to loss and replacement of EWRs based on the concept of control. While paper-based warehouse receipts are highly dependent upon the medium and, consequently, the destruction or loss of the medium does inevitably entail the destruction or loss of the warehouse receipt itself, in EWRs the ability to retain and exercise control is equally or even more important than the medium by which the relevant information about the EWR is recorded. This difference has interesting practical implications. Although they do not imply a substantial deviation from the general framework, provisions specific to EWRs assist in the interpretation and the application of substantive rules. Hence, article 13, paragraph 2 clarifies the meaning of loss or destruction of an EWR and provides guidance on how to interpret and apply the obligation of the warehouse operator to issue a replacement warehouse receipt upon request of the holder (at the time of the loss or destruction). In a registry-based model, even if the “deletion” of the entry related to the EWR is theoretically possible, the effects of loss or destruction will be more frequently associated with loss of control, irretrievability or inaccessibility of the information, lack of interoperability, or system failures. Likewise, while the issuance of a replacement for a lost or

destroyed paper warehouse receipt entails the production of an entirely new receipt in the chosen medium (paper or electronic as per art. 14), in the case of EWRs, it includes all actions directed at reinstating the control that has been lost.

126. Paragraph 3 provides rules of a procedural nature governing application to the courts for an order that the warehouse operator issue a replacement warehouse receipt. Paragraph 3 invites States to provide for “expeditious proceedings” with respect to such applications. Similar to paragraph 1, paragraph 3 requires applicants to deposit an indemnity bond or other adequate security for indemnity with the court.

127. Paragraph 4 governs the form of a replacement warehouse receipt to prevent instances of fraud. It provides that a replacement warehouse receipt must state that it is a replacement warehouse receipt.

128. Paragraph 5 provides that only the replacement warehouse receipt issued in accordance with paragraph 4 entitles the holder to claim delivery of the goods under article 26, but a person who, in good faith, acquires the warehouse receipt believed to have been lost or destroyed retains any right to claim damages from a previous holder that may be available under other laws.

#### **Article 14 – Change of medium of a warehouse receipt**

129. Article 14 entitles the receipt holder to request a change of medium of a warehouse receipt from paper to electronic or from electronic to paper (see para. 1) and sets forth the minimum requirements for giving the reissued document effect and validity (see para. 2). The change from electronic to paper might be needed in less developed markets where some players might not have access to the technology that was used to issue the receipt to the original holder. At the time of the change of medium, the warehouse operator has the duty to ensure that the warehouse receipt can no longer be used in its previous medium (see para. 2). In case the previous warehouse receipt was in electronic form, corresponding technological actions to “delete” the EWR (or even render it inaccessible), or to flag or tag it as unusable or replaced, should be carried out by the warehouse operator. Paragraph 3 clarifies that the change of medium has no legal effect on the rights and obligations of the parties.

## CHAPTER III

### TRANSFERS AND OTHER DEALINGS IN NEGOTIABLE WAREHOUSE RECEIPTS

#### SECTION A. HOW A NEGOTIABLE WAREHOUSE RECEIPT MAY BE TRANSFERRED

##### Article 15 – Transfer of a negotiable warehouse receipt

130. Article 15 sets out how a negotiable warehouse receipt may be transferred. It covers both [paper][non-electronic] and electronic warehouse receipts. The method of transferring negotiable warehouse receipts varies according to the manner in which the receipt is issued or endorsed. Article 15 envisages negotiable warehouse receipts that are issued or endorsed to the order of a named person or to bearer, or endorsed in blank. Under article 2, paragraph 5, a warehouse receipt that is issued to a named person “only” is a non-negotiable warehouse receipt. This type of warehouse receipt is not covered by article 15. Article 15 is silent on the transfer of a warehouse receipt that is issued or endorsed to a named person (as opposed to a named person “only”). The rules that apply to the transfer of warehouse receipts issued or endorsed to a named person are the same as those that apply to the transfer of warehouse receipts that are issued or endorsed to the order of a named person.

131. Article 15, paragraph 1 deals with the transfer of [paper][non-electronic] negotiable warehouse receipts. An endorsement is a signature on a document that facilitates its transfer. Article 15 mentions endorsements to the order of a named person, to bearer, or in blank (where no words are inserted other than the transferor’s signature.)

132. Article 15, paragraph 1, subparagraphs (a) and (b) address the first transfer of a [paper][non-electronic] negotiable warehouse receipt after its issue, as well as subsequent transfers. Article 15, paragraph 1, subparagraph (a) deals with a situation where a [paper][non-electronic] negotiable warehouse receipt is issued or endorsed to the order of a named person. This is transferred by endorsement and delivery by the named person to the intended transferee. By extrapolation from the definition of a non-negotiable warehouse receipt in article 2, paragraph 5, a warehouse receipt that is endorsed to a named person only will have the effect of preventing further transfers of the warehouse receipt. Article 15, paragraph 1, subparagraph (b) deals with transfer of [paper][non-electronic] negotiable warehouse receipts that are issued to bearer, or endorsed in blank or endorsed to bearer. In such cases, the warehouse receipt is transferred by delivery and there is no need for any signature.

133. Article 15, paragraph 2 covers the transfer of electronic negotiable warehouse receipts. The rules governing these transfers are the same as those governing [paper][non-electronic] negotiable warehouse receipts, except that the requirement of delivery is replaced by the requirement of transfer of control. Article 15, paragraph 2, subparagraph (a) provides that an electronic negotiable warehouse receipt that is issued or endorsed to the order of a named person is transferred by endorsement and transfer of control. Article 15, paragraph 1, subparagraph (b) provides that an electronic negotiable warehouse receipt is issued to bearer, or endorsed in blank or endorsed to bearer is transferred by the transfer of control.

134. Article 15, paragraph 3 sets out the pre-conditions for control of an electronic warehouse receipt. The requirements are that (a) a reliable method is used to establish exclusive control of that electronic warehouse receipt by a person; (b) to identify that person as the person in control; and (c) to transfer control over the electronic warehouse receipt. These requirements are cumulative and all three must be satisfied. Requirements (a) and (b) are identical to the requirements set out in article 11, paragraph 1, subparagraphs (a) and (b) of the MLETR which establishes control as the electronic equivalence of possession of a transferable document or instrument.

### **Article 15 bis – General reliability standard for electronic warehouse receipts**

135. Article 15 bis provides for the general reliability standard for electronic warehouse receipts, based on article 12 of the MLETR. Under article 15 bis, the method referred to in article 15, paragraph 3 shall be as reliable as appropriate for the fulfilment of the function for which the method is being used, in light of all relevant circumstances. Article 15 bis sets out a non-exhaustive list of seven elements that are relevant to determine the reliability of the method used in managing electronic warehouse receipts. The article does not prevent the enacting jurisdiction from adopting mechanisms to assess the reliability of methods and systems before their use (ex-ante approach) and to associate legal consequences to that assessment (e.g., legal presumptions), as well as to take into account any agreement between the parties.

## **SECTION B. EFFECT OF A TRANSFER OF A NEGOTIABLE WAREHOUSE RECEIPT**

### **Article 16 – Rights of a transferee generally**

136. For brevity, the heading of article 16 is “rights of a transferee generally”. The rights provided under article 16 are twofold. Under article 16, paragraph 1, subparagraph (a), a person to whom a negotiable warehouse receipt has been transferred obtains the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, and under subparagraph (b), obtains such rights to the receipt and the goods that the transferor was able to convey.

137. Under article 16, paragraph 1, subparagraph (a), the warehouse operator’s obligations to hold and deliver the goods depends on the terms of the warehouse receipt. Under article 8 of the MLWR, the terms of the warehouse receipt includes all the terms of the storage agreement. The transferee will have recourse against the warehouse operator if the warehouse operator breaches the terms of the warehouse receipt. But if the warehouse operator has a lawful reason under the warehouse receipt for not delivering the goods, this would entitle the warehouse operator to withhold delivery.

138. Applying article 16, paragraph 1, subparagraph (b), the transferee’s rights over the receipt and the goods depends on what rights the transferor was able to convey. If the transferor’s rights over the receipt and the goods are curtailed in some way, for example if the transferor is not their true owner and has no authority to transfer the receipt and the goods, or if the transferor has granted a security right in the receipt and the goods to a third party, this will correspondingly affect the rights that the transferee will obtain upon the transfer of the receipt. In the former situation, the transferee will generally not obtain any property rights over the receipt and the goods. In the latter situation, the transferee’s rights over the receipt and the goods will be subject to the prior security interest. This shows the operation of the principle that a person cannot give a better right than that person has (*nemo dat quod non habet*). If the transferor of a warehouse receipt has ownership rights over the receipt and the goods, these rights will be passed on to the transferee who will become the owner.

139. The rights of a protected holder are set out in article 18, which gives greater rights to a protected holder than article 16 gives to a transferee who is not a protected holder. Article 16, paragraph 2 states that article 16, paragraph 1 does not limit the rights of protected holders under article 18.

### **Article 17 – Protected holder of a negotiable warehouse receipt**

140. Article 17 explains who is a protected holder of a negotiable warehouse receipt. It should be read together with article 18, which provides for the rights of a protected holder.

141. Article 17, paragraph 1 sets out the three characteristics of a protected holder. First, under article 17, paragraph 1, subparagraph (a), the receipt must have been transferred to that person pursuant to article 15. As discussed earlier, such transfer would encompass a transfer by endorsement and delivery, or by delivery alone, for [paper][non-electronic] receipts, and a transfer by endorsement and transfer of control, or by transfer of control alone for electronic receipts. The second requirement, set out in article 17, paragraph 1, subparagraph (b), is that the person must have acted in good faith and without knowledge of any claim to the receipt or the goods covered by it, or of any defense on the part of any person other than the warehouse operator. This second requirement is important because the rights of the protected holder set out in article 18 give the protected holder immunity against such claims and defenses, and this would be unfair if the protected holder already knew about them at the time of the transfer. The requirement of good faith means that the protected holder must act honestly. The requirement of having no knowledge refers to actual knowledge rather than constructive knowledge. Under article 17, paragraph 1, subparagraph (c), the third requirement is that the transfer must have occurred in the ordinary course of business. This provision is general enough to cover the ordinary course of the transferor's business as well as the ordinary course of the transferee's business. A transfer that is not in the ordinary course of business could raise questions about whether the transferee was acting in good faith, as this should have caused the transferee to suspect that there was something irregular about the transfer.

142. Article 17, paragraph 2 focuses on the question of what amounts to knowledge of a claim to the warehouse receipt or the goods covered by it, which is one of the components of article 17, paragraph 1, subparagraph (b). It clarifies that a person should not be taken to have knowledge of a claim just because information relating to that claim has been registered in a specified secured transactions registry in the enacting State. This means that registration of a claim does not give constructive knowledge of the claim to someone with no actual knowledge of it.

143. Article 17, paragraph 3 addresses the situation where a warehouse receipt is issued to the order of someone who is not the depositor and makes it possible for this person to qualify to be a protected holder. Although the second requirement for a protected holder is not satisfied at face value because the receipt has not been "transferred" to that person, this is cured by article 17, paragraph 3, which provides that the issue of the warehouse receipt by the warehouse operator to a person who is not a depositor has the same effect as if the receipt had been transferred to that person pursuant to article 15. This provision is important to provide comfort to secured creditors who may require their customers to arrange for the issuance of such warehouse receipts to the order of the secured creditor.

#### **Article 18 – Rights of a protected holder of a negotiable warehouse receipt**

144. Article 18 sets out the rights of a protected holder in a negotiable warehouse receipt.

145. *Option 1:* In article 18, paragraph 1, a protected holder of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt. This is superior to the rights acquired by a non-protected holder, who only acquires such rights over the receipt and the goods that the transferor was able to convey. The protected holder also acquires 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 defense of the warehouse operator or any other person, other than claims and defenses that arise under the terms of the warehouse receipt or under the MLWR. A protected holder could thus acquire better rights than the transferor was able to convey.

146. *Option 2:* In article 18, paragraph 1, a protected holder of a negotiable warehouse receipt acquires the following rights 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: Under subparagraph (a), the protected holder acquires ownership of 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. Under subparagraph (b), the protected holder acquires such property rights to the goods as it would acquire by the transfer of physical possession of the goods. Subparagraphs (a) and (b) make a distinction between the protected holder's rights over the receipt as contrasted with the protected holder's rights over the goods. In some jurisdictions, transferring ownership of the goods with the warehouse receipt was against commercial practice and would expose the owner to the loss of the goods when the depositor did not have title to the goods. Option 2 of article 18, paragraph 1 addresses this concern by achieving the effect that while the protected owner obtains ownership over the receipt upon transfer of the receipt, the protected owner may not necessarily acquire ownership of the goods, as this would depend on the effect of the transfer of physical possession of the goods.

147. Article 18, paragraph 2 emphasizes the high degree of protection accorded to the protected holder. It sets out specific circumstances which might ordinarily affect a transferee's rights, and states that these do not affect the protected holder's property rights in the goods, nor its immunity from claims and defenses. The situations mentioned in article 18, paragraph 2 are (a) where the transfer to the protected holder or any prior transfer constituted a breach of duty by the transferor; (b) where 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) where the goods or the receipt had been previously sold, transferred or encumbered to a third person. Article 18, paragraph 2 makes clear that the specific events set out in that article will not negatively affect the rights of the protected holder under article 18, paragraph 1. This is not an exhaustive list. It does not mean that a claim or defense that is not mentioned in article 18, paragraph 2 will necessarily affect a protected holder's rights. The protection given by article 18, paragraph 1 is broad enough to cover all claims and defenses except those arising under the terms of the receipt or the MLWR. A warehouse operator who loses the right to raise a claim or defence against a protected holder retains any rights of compensation or indemnity that the warehouse operator may have against the depositor, for example if the warehouse receipt is invalid.

148. Article 18, paragraph 3 addresses the situation where the goods covered by a negotiable warehouse receipt are subject to some encumbrance, such as a right of retention of title, security or other equivalent right. A common example of this type of arrangement is for a seller of goods to retain title in the goods until they have been paid for. Another example might be where the goods have been mortgaged as collateral for a loan. Where the relevant goods are stored in a warehouse, such arrangements could result in a tussle between the seller with the right of retention or the mortgagee against the holder of a warehouse receipt covering the goods. Article 18, paragraph 3 states that the ownership and benefit of a protected holder are not subject to any retention of title right, security or other equivalent right in or in relation to the goods covered by the receipt. Enacting States should insert appropriate terminology to cover the relevant domestic concept of security.

149. Article 18, paragraph 4 addresses the situation where a judgment has been made against a person and the question arises whether this judgment can be enforced against a warehouse receipt that is held by a protected holder. This article makes clear that the ownership and benefit of a protected holder of a negotiable warehouse under article 18, paragraph 1 are not subject to any right pursuant to a judgment against any person other than the protected holder. This means that the protected holder's rights in the warehouse receipt will only be subject to a judgment made against the protected holder. In this situation, the warehouse operator will only be obliged to deliver the goods to the judgment creditor if the warehouse receipt is surrendered to it.

## SECTION C. SECURITY RIGHTS

### Article 19 – Third-party effectiveness of a security right

150. Article 19 is inspired by article 18 of the MLST, which sets out the primary methods for achieving third-party effectiveness. The function of article 19 is to encourage States to recognize the methods that a general secured transactions law should make available to achieve third-party effectiveness of a security right in a warehouse receipt. The MLWR does not assume that every State has a modern secured transactions law in place. It is not a function of warehouse receipts laws to provide a comprehensive set of rules for security rights in warehouse receipts. Rather, that law should build on, and ensure proper coordination with, an existing secured transactions law.

151. Enacting States are encouraged to implement the MLST, which provides for several rules specific to security rights in negotiable documents, including with respect to creation (art. 16), third-party-effectiveness (art. 26), priority (art. 49), and rights against the issuer of a negotiable document (art. 70). The general rules governing registration of notices concerning security rights and enforcement of security rights in tangible assets in the MLST apply to negotiable documents. Together, these rules provide a comprehensive framework for security rights in negotiable documents, including warehouse receipts. For more detailed guidance on the provisions that should be included in a secured transactions law to facilitate the use of warehouse receipts as collateral, the enacting State may refer to Notes prepared for meetings of the UNIDROIT Working Group on a Model Law on Warehouse Receipts.<sup>9</sup>

152. Article 19 recognizes that three methods should be made available to parties to transactions where a warehouse receipt is used as collateral. These three methods are: (i) registration in a registry established pursuant to an applicable secured transactions law; (ii) taking control of an electronic warehouse receipt; and (iii) taking possession of a paper warehouse receipt. The registration method is bracketed, and a State should include it if it has established a registration system pursuant to its secured transactions law. Articles 18 and 26 of the MLST recognize registration and taking possession as the methods applicable to security rights in warehouse receipts. Article 19 encourages States to recognize control as a method of third-party effectiveness specific to electronic warehouse receipts.

153. It is important that enacting States with a modern secured transactions regime ensure functional equivalence between paper and electronic receipts used as collateral. This can be achieved by (i) recognizing “control” as a separate method of third-party effectiveness, or (ii) recognizing that “control” is the functional equivalent of possession. If the latter approach is chosen, the legal effect of taking possession under the secured transactions law would apply equally to security rights in electronic warehouse receipts subject to control of the secured creditor.<sup>10</sup> If the former approach is chosen, enacting States should ensure they have in place a priority rule, comparable to that for paper warehouse receipts as specified in article 49 of the MLST. That rule would provide that a secured creditor in control of an electronic warehouse receipt would have priority over another security right made effective against third parties by registration, subject to satisfying the conditions set out in article 49. The MLWR in article 18, paragraph 3 already provides a “taking free” rule that enables a protected holder of a warehouse receipt to cut off a security right or other interest in the receipt or goods covered thereunder.

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<sup>9</sup> See Discussion Paper and Drafting Options on Security Rights in Warehouse Receipts, available at <https://www.unidroit.org/wp-content/uploads/2022/03/Study-LXXXIII-W.G.4-Doc.-5-Discussion-Paper-and-Drafting-Options-on-Security-Rights-in-WRs.pdf>, and Note on Security Rights in Warehouse Receipts, available at <https://www.unidroit.org/wp-content/uploads/2022/11/Study-LXXXIII-W.G.5-Doc.-4-Note-on-Security-Rights-in-Warehouse-Receipts.pdf>.

<sup>10</sup> See further Article-by-article Commentary to the UNCITRAL Model Law on Electronic Transferable Records, Article 11, available at [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mletr\\_ebook\\_e.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mletr_ebook_e.pdf).

154. The MLWR also includes an optional chapter V on pledge bonds to reflect the legislation in some jurisdictions where two documents may be issued: (i) a certificate of deposit and (ii) a pledge instrument, which embodies the creditor's security right over the underlying goods. For the commentary on the articles of the MLWR that explain their incorporation in a warehouse receipt law, see paragraphs [...], below.

## **SECTION D. REPRESENTATIONS AND GUARANTEES BY A TRANSFEROR OF A NEGOTIABLE WAREHOUSE RECEIPT**

### **Article 20 – Representations by a transferor of a negotiable warehouse receipt**

155. Article 20 sets out two main representations made by the transferor of a negotiable warehouse to the transferee. The first representation is that the receipt is authentic, that is, it is genuine, not a forgery. The second representation is that the transferor does not know of any fact that would impair the validity of the receipt, the value of the goods covered by the receipt, or the effectiveness of the transfer of ownership of the receipt and the goods it covers, except as notified to the transferee. These representations are for the transferee's protection. The transferee's position will be prejudiced if any of the representations are not true. In such a case, the transferee can bring a personal action against the transferor for breach of the representation. The transferor will be liable for breach of article 20, subparagraph (a) if the receipt is not authentic, even if the transferor did not actually know about this. In contrast, under article 20, subparagraph (b), the transferor will not be liable if the transferor did not know about the impairment of the validity of the receipt, the value of the goods or the effectiveness of the transfer.

### **Article 21 – Limited representations by intermediaries**

156. Article 21 deals with the situation where the transferor of a negotiable warehouse receipt is an intermediary who holds the receipt on behalf of another, or who is entrusted with the collection of a negotiable instrument or other claim, for example a collecting bank. The intermediary may exercise all rights arising out of the receipt. This would include obtaining delivery of the goods. Two options are provided regarding the intermediary's representations upon transfer of the warehouse receipt. The first option is that the intermediary can only transfer the receipt as an agent. This would incorporate the principles of agency, for example, the intermediary would be able to transfer the receipt only if it had authority to do so. The second option is that by transferring the receipt, the intermediary does not make the representations set out in article 20, but represents only that it is authorized to make the transfer.

### **Article 22 – Transferor not a guarantor**

157. Article 22 makes clear that a person who transfers a negotiable warehouse receipt does not guarantee, by virtue of the transfer, the performance by the warehouse operator of any obligations in relation to the receipt. This means, for instance, that the transferee cannot seek recourse against the transferor of the receipt if the warehouse operator fails to deliver the goods or if the warehouse operator has not stored the goods with care in accordance with the requirements of the MLWR or the storage contract.

## **CHAPTER IV**

### **RIGHTS AND OBLIGATIONS OF THE WAREHOUSE OPERATOR**

158. Chapter IV is aimed at increasing the value of warehouse receipts, rather than comprehensively regulating the rights and obligations of the parties to the storage agreement.



Accordingly, the chapter does not contain a comprehensive list of all rights and obligations of the warehouse operator. Instead, it lists the key rights and obligations that are likely to affect the value of the warehouse receipt.

159. Pursuant to article 23, subparagraph (a), the obligations included in chapter IV bind the warehouse operator even when a warehouse receipt does not comply with the requirements set out in the MLWR. This provision aims to ensure that even if a warehouse receipt does not comply with the requirements for an electronic record or document to be considered a warehouse receipt according to article 1, paragraph 2, such lack of conformity does not release the warehouse operator from its duties of safekeeping the goods.

160. The purpose of subparagraph (b) of article 23 is to clarify that the irregularity in issuing the warehouse receipt or conduct of the warehouse operator shall not affect the application of chapter IV.

### **Article 23 – Duty of care**

161. Article 23 establishes the general obligation of the warehouse operator to store and preserve the goods received. The standard of care required by article 23 is not absolute, but is the level expected of a diligent and competent operator in the particular trade.

162. Paragraph 2 indicates that the provision in paragraph 1 is a default rule. Different jurisdictions have different tolerances for contracting out of the general standards of care under a storage agreement, 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 is breached. Paragraph 2 offers the greatest possibility for the operator to vary its obligation under paragraph 1. This can be done by the terms of both the storage agreement and of the warehouse receipt. But the freedom of the operator is limited in the sense that it may not exclude or limit its liability for fraud, wilful misconduct, gross negligence or misappropriation of the goods.

### **Article 24 – Duty to keep goods separate**

163. Article 24 stipulates the obligation of the warehouse operator to store the goods separately. The obligation to store the goods is at the core of the storage agreement. In principle, the warehouse operator is at liberty to store deposited goods as best suits its operation, provided this falls within the constraints of any applicable standard of care. Alternatively, the parties may contractually stipulate that the deposited goods need to be stored in a particular manner and possibly kept separate from all other deposited goods in storage. This article establishes a mandatory rule that the goods should be kept separately.

164. Article 24 is based on the understanding that not keeping the goods separately may affect the interests of third parties. In the preparation of the Model Law, it was pointed out that the difficulty in leaving the issue of whether to store the goods separately exclusively to party autonomy is that the manner in which goods are stored can have ramifications that go beyond individual contractual agreements and personal claims, also giving rise to property law disputes. Specifically, if deposited goods are blended, difficulties may arise subsequently in separating the goods. Even more problematically, if deposited goods are commingled into a mass, in such a way that they are no longer distinguishable, an even broader range of issues requires consideration. Inter alia, it is necessary to establish the respective proprietary rights of each depositor in the commingled mass. Moreover, it is necessary to determine the proprietary rights, contractual claims and possibly restitutionary claims of each depositor if a commingled mass results in a shortfall of available goods.

165. Article 24 imposes mandatory obligations on the warehouse operator regarding the manner in which goods must be stored, but does not specify the consequence of breaching this obligation. The consequence shall therefore be determined in accordance with other law of the enacting State.

166. Paragraph 2 creates an exception to paragraph 1 in the case of fungible goods. Paragraph 2 of this article allows goods of the same nature to be commingled, if this is stated in the warehouse receipt.

### **Article 25 – Lien of the warehouse operator**

167. Article 25 stipulates that the warehouse operator has a lien on the goods and in any proceeds. The inclusion of the phrase “any proceeds” is intended to confirm that the lien 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 is now “in possession” of the insurance pay-out. The warehouse operator’s lien extends to the insurance pay-out.

168. Article 25, paragraph 1 lists four kinds of charges or expenses against which a warehouse operator has a lien. According to article 10, paragraph 1, subparagraph (b) of the Model Law, the amount of the storage fees and their calculation method are optional information that may be included in the warehouse receipt. The charges covered by this paragraph are therefore not necessarily stated in the warehouse receipt. This does not affect the establishment of a lien against charges and expenses listed in article 25, paragraph 1, subparagraphs (a), (b) and (c), but charges or expenses covered by article 25, paragraph 1, subparagraph (d) are incurred under another storage agreement and therefore must be stated in the warehouse receipt. This provision is intended to make the holder aware of the existence of these unusual charges.

169. The lien is effective against third parties. Third parties include any holder of the warehouse receipt.

170. The protected holder is a special type of third party. To enforce a lien against a protected holder, the charges and expenses must be specified on the face of the warehouse receipt or constitute a reasonable charge for storage after the date of issue of the receipt. This “reasonable charge” only refers to charges provided for in article 25, paragraph 1, subparagraph (a).

171. The nature of the lien created under article 25 is not expressly stated in this article. It should be decided according to the law of the enacting State.

172. Paragraph 4 requires the enacting State to specify the law according to which the warehouse operator may enforce its lien. The Model Law itself does not contain provisions on methods and requirements of enforcement.

### **Article 26 – Obligation of warehouse operator to deliver**

173. The obligation to deliver the deposited goods is a key element of any storage agreement. Article 26 makes it a mandatory obligation for the warehouse operator to deliver the goods to the rightful holder. The excuses that absolve the warehouse operator from performance of this obligation vis-à-vis a person who is entitled to delivery of the goods are listed in article 29.

174. The person entitled to delivery of the goods is the holder of the warehouse receipt who meets the three requirements laid out in article 26.

175. The warehouse operator shall cancel the warehouse receipt upon delivery of the goods. If the warehouse receipt is not canceled, the operator is liable to the holder of the warehouse receipt,

even if the holder has obtained the warehouse receipt after delivery of the goods. No special provision is made on how to cancel the warehouse receipt. In business practice, the usual method is to destroy the document or write the word “canceled” on it, in the case of a paper-based warehouse receipt, or to make it inoperable, in the case of an electronic warehouse receipt.

### **Article 27 – Partial delivery**

176. Article 27 establishes a mandatory obligation for the warehouse operator to deliver part of the goods, if so instructed by the holder of the warehouse receipt.

177. Paragraph 1 lists three conditions for partial delivery. These conditions are the same as those stipulated in article 26, paragraph 1.

178. Paragraph 2 sets out the obligation of the warehouse operator to note the partial delivery on the warehouse receipt and return possession or control of the receipt to the holder.

### **Article 28 – Split warehouse receipt**

179. Article 28 imposes an obligation on the warehouse operator to split the warehouse receipt into two or more receipts that cover in total the stored goods covered by the original warehouse receipt. This is a mandatory obligation; the operator may not refuse a request by the holder to split the warehouse receipt.

180. The warehouse operator may split the warehouse receipt only if three conditions are met: it must be requested by the holder of the warehouse receipt, possession or control of the original warehouse receipt must have been surrendered, and additional cost reasonably incurred by the warehouse operator as a consequence of the split and reissuance of the warehouse receipt has been paid, unless such cost has been covered by the storage agreement.

### **Article 29 – Excuses from delivery obligation**

181. It is generally accepted that in some circumstances, the duty of the warehouse operator to deliver the goods may be excused. Article 29 sets out the excuses of the warehouse operator from delivering the goods.

182. Article 29 lists four circumstances under which the warehouse operator is excused from liability for failure or delay in delivery. Subparagraph (a) should be read in conjunction with article 23, which deals with the duty of care of the warehouse operator. One example of this circumstance is where the goods have been stolen. Subparagraph (b) should be read together with article 25 and article 30. As a natural consequence of enforcing the lien pursuant to article 25, paragraph 4, the warehouse operator is relieved of the obligation to deliver the goods. If the operator has sold or otherwise disposed of the goods pursuant to article 30, the storage agreement has been terminated and hence the warehouse operator is no longer under any obligation to deliver. The provision of article 29 merely clarifies and emphasizes that the warehouse operator is not liable in these circumstances. One example of the warehouse operator “[having] received competing claims to the goods” in subparagraph (c) is when there are multiple holders claiming the goods and it is unclear whether any of the claimants are protected holders. It should be noted that the situation of overissuance, where the operator had issued more than one receipt for the goods, is not covered by subparagraph (c). For this situation, the operator should be liable rather than being excused from its delivery obligation. Subparagraph (d) refers to a court order or other circumstances beyond the control of the operator, for example if the goods have been confiscated.

183. The burden of proof is on the warehouse operator who needs to establish the circumstances excusing itself pursuant to article 29.

### **Article 30 – Termination of storage by the warehouse operator**

184. Article 30 stipulates that the warehouse operator has the right to terminate the storage after giving notice. There are several situations that may trigger this right, including non-removal of goods upon expiry of the storage period, termination in the case of an indefinite storage period, and goods becoming hazardous in nature. Article 30 only addresses the unusual case where goods are abandoned. There is no provision in article 30 addressing the usual case where the holder of a warehouse receipt claims the goods, for example, when the validity of the warehouse receipt comes to an end at the expiry of the period stated on the warehouse receipt and the holder claims the goods, but the operator refuses to deliver. This situation shall be dealt with in accordance with article 26.

185. Storage of goods may be performed over an extended period of time. In principle, the duration of storage is either fixed or for an indefinite term. In practice, an open-ended duration tends to be the norm in most trades. According to paragraph 1, the time that an operator can terminate the storage is at the end of the storage period specified in the warehouse receipt. If the storage period has expired, or if no storage period is specified in the warehouse receipt, the warehouse operator can terminate the storage within a reasonable time. This reasonable time shall be not less than certain days after the time specified in the notice, and the exact days shall be specified by the enacting State. It was noted during the preparation of the Model Law that there is a structural imbalance. For warehouse operators, it is generally unproblematic to organize their operation in such a way as to satisfy requests to deliver deposited goods at short notice. By contrast, it is generally arduous for depositors to take delivery of goods at short notice, as they tend not to have the necessary facilities and must rely instead on third parties. Thus, unexpected requests to take delivery of deposited goods are likely to be extremely onerous for depositors, possibly resulting in the sale of the deposited goods at sub-market prices or even injury to or loss of the goods. The Model Law sets out default rules to establish a starting position for negotiation.

186. Paragraph 1 requires notice to be given before the operator takes action. During the preparation of the Model Law, the question of who should be notified was raised for discussion. Paragraph 1 requires notice to be given to all persons known to the warehouse operator to claim an interest in the goods. This raised the question of whether a warehouse operator necessarily knows who might have an interest in the goods. If not, then an issue arises regarding to whom the warehouse operator should give notice if it wishes to terminate the storage. It was noted that in some legal systems 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. Therefore, the requirement of paragraph 1 goes further than these legal systems, because it requires giving notice to specific persons and not generally to the public. 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. As a compromise, paragraph 2 of article 30 allows for notice to be given “by public advertisement” if the warehouse operator does not know of any person claiming an interest in the goods. The public advertisement shall be conducted in accordance with the relevant law specified by the enacting State.

187. Paragraph 1, subparagraph (b) outlines the consequences if a demand made by the warehouse operator in accordance with paragraph 1, subparagraph (a) is not met. If the amount is not paid and the goods are not removed before the date contemplated by paragraph 1, subparagraph (a), the warehouse operator may sell the goods. The sale can be public or private, but must be conducted in a commercially reasonable manner.

188. Paragraph 3 provides for terminating the storage of hazardous goods. The warehouse operator has great discretion to dispose of hazardous goods. In the process of drafting paragraph 3, it was suggested that the warehouse operator should first demand immediate removal of hazardous goods before selling them, but this suggestion was not adopted because it was deemed inefficient. There is no public notice requirement in this paragraph in the case that the warehouse operator does not know anybody claiming an interest in the goods. The reason that the warehouse operator may sell hazardous goods without advertisement is that to require advertisement in the case of hazardous goods, which might require urgent disposal, could delay the sale process and increase the risk posed by the goods.

189. Paragraph 3 does not give detailed guidance on the disposal process but rather sets a general standard that the disposal must be executed in a commercially reasonable manner. The warehouse operator shall first make reasonable efforts to dispose of the goods through public or private sale. If a reasonable sale is not possible, it may dispose of the goods in any lawful manner.

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## CHAPTER V

### PLEDGE BONDS

#### *Introduction*

190. As indicated above (see paras. [...]), there are generally two systems of warehouse receipts under domestic laws. Many countries adopt the so-called “single” system, which provides for the issuance of warehouse receipts as one single document that can be used both for trading in the goods covered by the receipt and for obtaining financing secured by them. Several other countries, in particular those where the law does not allow a secured creditor to retain title to collateral in case of default by the debtor, separate the two functions through the so-called “dual” system, in which the warehouse receipt consists of two documents: a certificate of deposit that can be used to transfer rights in the goods (*certificado de depósito, récépissé d’entreposage*) and a pledge bond that grants the holder a security interest in the goods for the amount stated in the bond (*bono de prenda, warrant*). The model law recognizes the existence of these two systems and offers Chapter V on “Pledge bonds” as an optional chapter for enacting States that wish to implement a dual warehouse receipt system, as well as to States that already have such a system but wish to modernize it – for instance to support the use of electronic warehouse receipts.

191. Chapter V on “Pledge bonds” is an optional chapter intended only to be adopted by enacting States that seek to implement a dual warehouse receipt system. This chapter deals with several matters pertaining to pledge bonds, including their issue and form, their effect and transfer, and the rights and obligations of the warehouse operator. These provisions are presented separately from the rest of the Model Law in order to facilitate use of the MLWR by States that do not wish to adopt a dual warehouse receipt system; however, States that do wish to implement such a system may consider integrating the content of this chapter with chapters I through IV of the Model Law.

192. The model law gives enacting States the choice between providing for a single warehouse receipt or a dual warehouse receipt system. In the interest of clarity and legal certainty, the model law does not contemplate a hybrid system allowing for the issuance of both single and dual warehouse receipts at the choice of the warehouse operator or the depositor.

#### **Article 31 – Issue and form of a pledge bond**

193. Under the dual system, warehouse receipt and pledge bond are typically issued as one document capable of being separated into two at the choice of the holder, be it the original or a subsequent holder. The holder may, for instance, wish to retain the warehouse receipt – and thereby also the ability to trade in the goods by transferring the warehouse receipts – and at the same time borrow money using those goods as collateral, in which case the holder would detach the pledge bond from the warehouse receipt and transfer it to the lender. The holder may also prefer to retain both documents together and later transfer them to the same new holder. In a dual system, both warehouse receipt and pledge bond are typically transferable – together or separately – under the same conditions and by the same means as negotiable instruments.

#### *Definition of a pledge bond*

194. Paragraph 1, which mirrors the structure of article 1, paragraph 2, states the distinct function of a pledge bond under a dual system as a document that represents the holder’s right to payment of a certain amount and grants to its holder a possessory security right in the goods covered by the warehouse receipt. Paragraph 1 reproduces the signature requirement contained in article 1, paragraph 2. Paragraph 1 also stresses the relationship between the pledge bond and the warehouse

receipt by requiring that the pledge bond be “associated” with, but “detachable from”, the warehouse receipt. In practice, a paper pledge bond is typically “associated” with, while “detachable from”, a warehouse receipt if both are issued in one paper (negotiable) instrument with a perforated line in between so that they can be separated. Electronic pledge bonds are “associated” with the electronic warehouse receipt by [...]. In case of electronic warehouse receipts, the “detachability” is achieved if a method is used that makes the pledge bond capable of being controlled separately from the electronic warehouse receipt. Information relating to the electronic pledge bond does not have to be contained in a separate electronic record. It may be contained in the same composite electronic record.

#### *Signature and information requirements*

195. Paragraph 2 requires both the warehouse receipt and the pledge bond to be “identified” as such, which is usually done by their containing clear language to that effect. It should be noted that, whereas in a single system the designation of the document as “warehouse receipt” is a condition for its validity and enforceability (see art. 9, para. 1 and accompanying commentary at paras. [...], above), in the case of a dual system such clear designation is indispensable for purposes of transparency and legal certainty, as it serves to place the holder of the warehouse receipt on notice about the separate circulation of the pledge bond and vice-versa. Apart from that, however, the two documents must contain the same information, as they cover the same goods delivered for storage by the depositor.

#### *Definition of “holder” of a pledge bond*

196. Paragraph 3 defines the concept of “holder” of a pledge bond along the lines of the definition of holder in article 2, paragraph 3. Existing methods for issuance and transfer of warehouse receipts in paper and electronic form in a single system are also used in a dual system, as long the warehouse receipt and the pledge bond are capable of being independently controlled once transferred separately. In an electronic environment, this can be achieved, for instance, through the issuance of warehouse receipt and pledge bond as distinct digital tokens or through separate entries in electronic registries for each. In some systems, both documents are initially issued as paper documents and subsequently immobilized with a central custodian which afterwards keeps a registry of transfers and other transactions, including related information (such as the amount of the debt secured by the pledge bond).

#### *Application of the rules on control and on the issue and content of warehouse receipts to pledge bonds*

197. Paragraph 4 provides that articles 3 and 6 to 14 apply to pledge bonds in the same way as they apply to warehouse receipts. Among them, articles 9 to 11 relate to the content of the warehouse receipt, and consequently the pledge bond. As a result of applying articles 9, paragraph 2 and 10, paragraph 2 to pledge bonds, any incomplete or incorrect statement of mandatory information (as listed in art. 9, para. 1) or incorrect additional information (as allowed by art. 10, para. 1) on the pledge bond does not affect the validity of the pledge bond. However, the warehouse operator is liable for any losses suffered by any person, most typically the holder of the pledge bond, as a result of such incomplete or incorrect statement. The rules on the scope and measurement of loss are left to the discretion of each enacting State.

### **Article 32 – Effect of a pledge bond**

#### *Grant of security right*

198. A necessary consequence of the function of the pledge bond as an instrument that embodies a security right in the goods covered by the warehouse receipt is that the rights of the holder of the

warehouse receipt are subject to the rights of the holder of the pledge bonds. In other words, a person who acquires rights in the goods by becoming the holder of the warehouse receipt acquires goods encumbered by the security rights held by the creditor under the pledge bond. This means that security rights created by pledge bonds are effective against holders, including subsequent holders, of the warehouse receipt. This principle is reflected in paragraph 1.

*Termination of the security right by the holder of the warehouse receipt*

199. The holder of the warehouse receipt is not necessarily the debtor of the credit secured by the pledge bond, but it has an interest in terminating the security right in the goods covered by the pledge bond so that it can obtain the goods from the warehouse operator. Indeed, the holder of the warehouse receipt may wish to be able to trade in the goods free and encumbered or also claim their delivery from the warehouse operator. Both results are only possible after the security interests of the holder of the pledge bond are extinguished, and the documents are reunited. For that purpose, paragraph 2 recognizes the right of the holder of the warehouse receipt to pay the amounts secured by the pledge bond to its holder (of which the holder of the warehouse receipt has knowledge through the statement required by article 33, paragraph 2, subparagraph (b)) even if the amount is not yet due and request the surrender of the pledge bond by the paid creditor. Depending on the design of the warehousing system and whether or not it is completely dematerialized, some domestic laws expressly provide the holder of the warehouse receipt with the right to deposit the amount due either with the warehouse operator or the custodian of the pledge bond who hold it in escrow to the benefit of the holder of the pledge bond, and thereby obtain the delivery of the goods.

*Enforcement of the security right*

200. Paragraph 3 provides for the right of the holder of the pledge bond to enforce its security rights in the warehouse receipt and the goods it covers if the debt secured by the pledge bond is not paid, by resorting to the remedies available under the laws of the enacting State that provide for the enforcement of security rights over moveable property, as indicated by the enacting State. Under this system, the lender – typically a financial institution – holds the pledge bond until the sale of the goods, using the proceeds of sale to repay the loan.

### **Article 33 – Transfers and other dealings**

201. Until the warehouse receipt and the pledge bond are separately transferred, the decision to detach them from one another, to keep and transfer them together or to transfer only one of them, rests entirely with the holder of the warehouse receipt. The holder may choose any of those options according to its business judgment and financing needs. Once separated, each document will transfer the rights it represents: the warehouse receipt will transfer rights to the goods, and the pledge bond will transfer a secured credit. Paragraph 1 stresses the import of each document by clarifying that the holder of a pledge bond acquired a security right but will neither directly nor by implication acquire ownership of the goods.

*Separate transfer of warehouse receipts and pledge bonds*

202. Paragraph 2 is an important provision to place any holders of the warehouse receipt and the pledge bond as well as the warehouse operator on notice of the separate circulation of the two documents as well as the amount of the debt secured by the pledge bond and the due date for payment. Transcribing such information into the warehouse receipt and providing a copy of the completed warehouse receipt to the warehouse operator (and the custodian of the electronic warehouse receipt and pledge bond, as the case may be) is an important requirement to enable the holder of the warehouse receipt to exercise its right to redeem the debt in accordance with article 32, paragraph 2 and claim delivery of the goods pursuant to article 34, paragraph 2. The due date is furthermore important for the warehouse operator to know as it will affect the conditions for



delivery of the goods (art. 34, paras. 2 and 3). The amount need not be expressed as a fixed sum of money and may include interest rates and other financial charges.

*Application of the rules on transfer of warehouse receipts to pledge bonds*

203. Most provisions concerning transfers and other dealings in warehouse receipts under a single system would also apply to transfers and dealings in pledge bonds under a dual system. Accordingly, paragraph 4 determines the application of articles 15 to 18 and 20 to 22 to pledge bonds. Conversely, paragraph 4 does not provide for the application of article 19 on third-party effectiveness of security rights to pledge bonds, since third-party effectiveness, in the case of a pledge bond, derives automatically from article 31, paragraph 1 and does not require the possession or control of the warehouse receipt. As the pledge bond is analogous to a negotiable instrument, the security right it represents is perfected and becomes effective against third parties by the holder acquiring the pledge bond by endorsement and possession, or by endorsement and transfer of exclusive control if in electronic form.

**Article 34 – Rights and obligations of the warehouse operator**

*Application of article 28 on split warehouse receipts*

204. The holder of a warehouse receipt has the right, under article 28, to request the warehouse operator to split the warehouse receipt into two or more warehouse receipts that cover in total the goods that were covered by the original warehouse receipt. In order to avoid a detriment to the rights of the secured creditor holding the pledge bond, article 34, paragraph 1, clarifies that, where a pledge bond has been transferred separately from the warehouse receipt, the warehouse operator shall only split the warehouse receipt when so instructed by the holder of both the warehouse receipt and the pledge bond.

*When the amount secured by the pledge bond is not yet due*

205. In order to avoid a detriment to the rights of the secured creditor holding the pledge bond and also ensure that the rights of the holder of the warehouse receipt in the goods are not deprived without its consent, paragraph 2 permits the delivery of the goods by the warehouse operator only upon presentation of both the warehouse receipt and the pledge bond.

*When the amount secured by the pledge bond is already due*

206. However, once the debt secured by the pledge bond has matured and the secured creditor has not been satisfied by the due date, the presentation of the warehouse receipt is no longer needed, and the unsatisfied creditor holding the pledge bond is entitled to enforce its security rights by way of taking possession of the encumbered goods (see commentary on art. 32, para. 3 at paras. [...]). In such a case, paragraph 3 provides for delivery of the goods [upon presentation of the pledge bond whether or not the warehouse receipt is also surrendered] [or] [as required by the holder of the pledge bond pursuant to its procedure for enforcing the pledge bond]. [The first alternative in square brackets assumes that if the debtor was in default, the creditor should be able to foreclose on the security (the underlying goods) without any need to produce the warehouse receipt. The detached warehouse receipt no longer has value unless accompanied by a pledge bond. The second alternative refers to other procedures for enforcing pledge bonds in the enacting State pursuant to which the holder of the pledge bond may require delivery of the goods. Enacting States should choose the alternative that is consistent with their enforcement law.]

207. Except for these special situations, most provisions concerning rights and obligations of the warehouse operator under a single system, as set forth in articles 23 to 30, would also apply to transfers and dealings in pledge bonds under a dual system.

## **CHAPTER VI**

### **APPLICATION OF THIS LAW**

#### **Article 35 – Entry into force**

208. Article 35, paragraph 1 requires the enacting State to determine the date when the new law will enter into force. In determining the date for the entry into force of the new law, careful consideration should be given to its implications for all relevant stakeholders. A certain period of time will be necessary to, *inter alia*, allow stakeholders to familiarize themselves with the new law and its implementing secondary legislation and to prepare for compliance with the new rules.

209. Paragraph 2 of article 35 provides that the new law applies only to those warehouse receipts (and, in case of a dual receipt system, pledge bonds) that are issued after its entry into force. Enacting States that are reforming a dual receipt system are required to incorporate the bracketed reference to pledge bonds in paragraph 2, whereas States not implementing the dual system would have to delete the reference in its entirety.

#### **Article 36 – Repeal and amendment of other laws**

210. The Model Law provides a comprehensive private law framework to govern the issuance and transfer of warehouse receipts. Accordingly, paragraph 1 requires the enacting State to specify the laws to be repealed upon entry into force of the new law. The way in which the repeal is effectuated will depend on the form of the prior law and the legal system of the enacting State. If the prior law is set out in a separate statute or combination of statutes, it can be repealed in its entirety. If the prior law is contained in statutes that also address other topics, the enacting State must specify the provisions to be repealed and those to be retained or amended. If all or part of the prior law is based on judicial opinions (as may be the case, for example, in common law systems), the effect of the new warehouse receipts law typically will be to override the rules derived from the prior case law without the need for the enacting State to take any explicit repealing measures.

211. Warehouse receipt law interacts with many other laws, including laws on secured transactions, commercial contracts, civil procedure and enforcement as well as the administrative law framework on warehouses more broadly. These other laws may contain provisions that refer to or are premised on the enacting State's prior law governing warehouse receipts. Accordingly, paragraph 2 provides for the enacting State to amend these provisions to the extent needed to align them with the provisions of its new law.

212. Like the other articles of the Model Law, article 36 takes effect only in the moment when the new law enacting the MLWR enters into force pursuant to article 35. Until that date, the provisions listed for repeal or amendment in this article remain in effect.

## IV. COMPLEMENTARY LEGISLATION

### A. INTRODUCTION

213. The Model Law on Warehouse Receipts covers the private law aspects of warehouse receipt systems, including the issuance and transfer of warehouse receipts and the rights and obligations of the parties. These factors are important in enabling commercial transactions involving stored goods and in facilitating access to finance through the use of warehouse receipts as collateral. However, in order for these provisions to be applied effectively, they need to be complemented by legislation creating an institutional framework for regulating warehouses and/or creating a warehouse receipt system (WRS).

214. The primary purpose of this Part is to provide guidance on the development of complementary rules to implement the provisions of the new warehouse receipts law effectively. In this Part, laws enacted by legislative bodies are referred to as “primary legislation,” while laws or regulations enacted by the executive or regulatory bodies are referred to as “secondary legislation”. The term “complementary rules” is used for rules that supplement the direct implementation of the MLWR into domestic law, regardless of the body that enacted them. This is not a reflection of legislative techniques used in all States that may wish to organize the body of rules governing warehouse receipts systems differently, including governing many regulatory aspects in primary legislation.

215. As such, this Part goes beyond the scope of the MLWR to provide guidance on designing regulatory aspects of WRS, which do not directly implement the provisions of the Model Law. The decision to include such guidance in the Guide to Enactment was made because of the importance of these aspects in operationalizing the warehouse receipts system, which will reinforce the value of warehouse receipts. The suggested provisions in this Part are therefore important in achieving the main objectives of the Model Law as outlined earlier in this Guide.<sup>11</sup>

216. The remainder of this Part is divided into four sections on licensing and supervision of warehouses, insurance, central registry of warehouse receipts, and electronic warehouse receipts. Within each section, there are suggested provisions for inclusion in the secondary legislation.

217. Section B on “Licensing and supervision of warehouses” elaborates on the importance of these regulatory processes in giving confidence to all parties involved. It then outlines specific provisions that can be included in the relevant legislation in relation to the scope of the warehouse receipts system, administration of warehouse licenses, licensing periods, inspections, and suspension or revocation of licenses. Finally, it suggests several provisions for inclusion in secondary legislation relating to licensing requirements, inspection requirements, inspectors, and penalties and offences (including the suspension or revocation of licenses).

218. Section C on “Insurance” contains suggestions for provisions which relate to the warehouse operator’s obligation to take out an insurance policy which covers the stored goods. The suggested provisions pertain to the minimum coverage value and the events covered by such policies, the risk-reduction measures to be implemented by warehouse operators, the scope of insurance coverage, the information to be included in the warehouse receipt (in relation to insurance), and previously insured merchandise.

219. Section D on “Central registry of warehouse receipts” outlines several provisions relating to the registration of warehouse receipt transactions. The matters covered in this section include the types of transactions that can be registered; the establishment of a central registry; the duty/power

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<sup>11</sup> See Part II, Section B, above.

to register transfers of warehouse receipts; functions, duties, and features of the central registry; and accessibility of the central registry to the parties.

220. Section E on “Electronic warehouse receipts” first discusses general rules that allow the introduction of EWRs. Subsequently, proposals for complementary rules are explained, whereby a distinction is made between rules that concern the technological design and rules that address the operators of systems of EWR systems. Finally, the special challenges of the enforcement of EWR-related rules are elaborated.

## **B. LICENSING AND SUPERVISION OF WAREHOUSES**

221. The enacting State may wish to consider developing rules providing for the standards or requirements that warehouses and operators need to meet in relation to the storage of goods to ensure that quality is preserved over a set period. Such legislation will specify the duty of care of the warehouse operator according to article 24. Enacting States may thus allow operating a warehouse or participation in a WRS only after issuance of a respective license. Whether separate licences are provided for the warehouse itself and the operator of a warehouse or whether the enacting State provides only for a single licence for the operation of a warehouse may be left to the discretion of the respective rulemaker in order to ensure compatibility with the applicable law.

222. Requiring an operator to be licensed to operate a warehouse ensures confidence to all parties. An adequate licensing and inspection system for warehouses will provide credibility to warehouse receipts, enabling them to be treated as reliable liquid assets.

223. The following are some of the provisions that may be considered.

### *Scope and definitions*

224. The enacting State may include in its legislation a definition of a warehouse, e.g. the type of structure (for example bag warehouse, silo, bagged warehouse), whether it includes vaults and tanks respectively for precious metal and oils, or alternative storage types like silo bags, and whether it may be public or private or both.

### *Administration*

225. The enacting State should designate the competent authority for licensing and supervision of warehouses and define its mandate and functions. The designated authority can be an already-existing regulatory body (e.g., the Ministry of Agriculture or the Securities Exchange Commission) or, where no such body exists, one formed pursuant to the new legislation (e.g., a Warehouse Receipts Council). An independent licensing and supervising authority provides confidence in the integrity of the warehouses.

226. The WRS legislation may also provide for the powers and functions of the designated licensing authority. These functions may include, among others, the issuance, suspension or revocation of licenses and the establishment of a grading and weighing system for commodities.

### *Licensing requirements*

227. The complementary rules should determine standard conditions for warehouses to be licensed, which may include the provisions stated in the following paragraph. Upon meeting the licensing requirements, a license will be issued by the licensing authority. However, if there are non-conformities or non-compliance, the applicant may be given time to correct the non-conformance.

228. **Infrastructure requirements:** Infrastructure requirements may vary depending on the different commodities stored. In principle, the licensing authority may require the warehouse structure to meet the following conditions:

- (a) sound construction, building with proper roofing that inhibits access to birds and rodents and prevents leakages;
- (b) smooth, even flooring;
- (c) designated loading and off-loading bays;
- (d) secure premises with lockable access points;
- (e) limited access to the warehouse with set security protocols;
- (f) surveillance;
- (g) perimeter wall or fencing;
- (h) sufficient lighting for both day and night;
- (i) calibrated and functional weighing equipment including weighbridges;
- (j) adequate grading systems and equipped laboratories where necessary;
- (k) drying equipment and facilities;
- (l) fumigation systems;
- (m) pest control programs;
- (n) proper working aeration and temperature control systems;
- (o) adequate housekeeping and sanitation facilities;
- (p) water and sanitation;
- (q) adequate inventory management systems including type of packing materials, segregation and commingling protocols for goods;
- (r) protocols for handling hazardous material;
- (s) effective drainage systems;
- (t) fire prevention equipment;
- (u) adequate operator training and equipment maintenance;
- (v) environmental requirements e.g. location of the warehouse;
- (w) management plans for environmental exposures e.g. flooding, landslide, earthquakes;
- (x) internet connectivity (especially in case of electronic warehouse receipts);
- (y) office space, possibly also a safe/vault is specified for locking away records/stamps and other sensitive documents at night; and
- (z) any other requirements that may apply for a given value chain or in a given location.

The quality of the infrastructure may be in accordance with existing national standards for warehouses for specific goods that will form the basis for implementation and ensure uniformity.

229. **Qualified personnel:** The legislation may require the employment of qualified personnel such as warehouse managers, certified graders, and weighers with integrity to ensure that the employed staff has the expertise to meet quality parameters, e.g. through accurate weighing and quality grading, as this affects the value of the stored goods.

230. **Warehouse operator requirements:** These are conditions for a warehouse operator to meet in order to operate a warehouse. These conditions may include the following:

- (a) [ability to raise capital to finance initial investment in the warehouse infrastructure and three years of operational expenses;]
- (b) a viable business plan for the intended warehouse business;
- (c) legal and fiduciary standing of the operator and personnel;
- (d) registration with the revenue authority;
- (e) recognition as a legal entity, if applicable, in a certain legal form and/or with a specific purpose;
- (f) personnel qualified in warehousing operations;
- (g) health and safety policies in place;
- (h) standard operating procedure;
- (i) tariffs, and other storage terms and conditions;
- (j) minimum net worth requirements; and
- (k) a performance bond for the goods intended for storage.

These requirements should be determined objectively on technical grounds, not based on policy considerations.

This would ensure that only warehouse operators and personnel in good legal and financial standing are allowed to operate a warehouse, giving confidence to depositors, customers and financial institutions in the integrity and capability of those who offer storage services and issue warehouse receipts.

231. **Insurance:** The enacting State may require the warehouse operator to have mandatory all-risk insurance policies for the infrastructure and goods intended for storage, professional indemnity or third-party liability insurance as elaborated under Section C, below.

#### *Licensing Period*

232. The legislation may provide for a license validity period of 1-5 years depending on the existing licensing practices ensuring quality warehousing and parties' confidence in the system.

#### *Inspections*

233. The legislation may provide for inspections of warehouses as a condition of granting the license to ensure transparency and maintenance of standards in the storage industry. Inspections may be carried out not only during the license application process but also to monitor compliance with the duties of operating a warehouse. These inspections can be scheduled as well as unannounced. The scheduled inspections can be undertaken regularly, while the frequency of unannounced inspections may be left to the discretion of the competent authority.

#### *Inspection requirements and inspectors*

234. The legislation may provide the parameters and the procedure of the inspections e.g. inspection of the goods in storage, storage records, books of accounts, equipment, and the certificates showing calibration and maintenance schedules in addition to the licensing requirements. The legislation should impose a duty on the warehouse operator to grant the inspectors access to

the warehouse and to relevant information as well as a general duty to cooperate. Respectively, obstruction of inspectors may constitute an offense.

235. The legislation may provide for the appointment of inspectors to undertake inspections for the issuance of licenses and to monitor the maintenance of quality standards during the validity of the licenses for compliance purposes. The inspectors can be employees of the licensing authority as well as employees of private entities, as long as the latter are under the oversight of the licensing authority. The roles and functions of the inspectors should be clearly outlined to ensure that the rights of the warehouse operator are protected and are not subjected to abuse. The appointed inspectors may be required to identify themselves in addition to presenting authorization letters during inspections.

#### *Suspension and revocation of a license*

236. The legislation may also provide administrative procedures on the process for suspension and revocation of licenses, including giving notification of the intention to suspend or revoke the license to the warehouse operator. The administrative procedure may provide for a hearing of the warehouse operator before the suspension or revocation of the license. This enables the licensing authority to consider the prevailing circumstances that led to the infringement in order to take appropriate measures. These measures may encompass the imposition of fines, remedial actions with a warning, or other enforcement actions to protect the persons who have a legitimate interest in the goods stored in the warehouse.

#### *Penalties and Offenses*

237. The legislation may provide for the imposition of sanctions for infringements of the license requirements. These sanctions may encompass suspension or revocation of a license. The nature as well as the intensity of the sanction should be proportionate to the severity of the infringement.

238. The conditions under which a license may be revoked or suspended may include, amongst others: failure to maintain the standards of the warehouse infrastructure; failure to preserve the quality of the goods in storage, and more broadly failure to fulfil the duty of care; failure to account for the deposited goods for which a warehouse receipt has been issued; criminal offences such as fraud and theft; and falsification of records.

### **C. INSURANCE**

239. The overall aim of requiring warehouse operators to insure the deposited goods is to protect the rights of depositors, creditors, and other receipt holders while the goods are stored in the warehouse. The insurance should guarantee the receipt holder's rights in case of warehouse default or failure to deliver the stored goods. Insurance thereby provides security and strengthens the trust of receipt holders to receive their goods.

240. The MLWR does not require a warehouse operator to take out any insurance for the fulfillment of its obligations in relation to the goods stored in its warehouse. It merely states that the warehouse operator may include in the warehouse receipt the name of the insurer, if any, who has insured the goods (see art. 10, para. 1, subpara. (a)).

241. However, the law governing warehouses often requires warehouse operators to take out insurance as a condition of issuing and maintaining a license. The legislation regarding warehouse receipt systems should establish the minimum coverage (value) and a list of events that must be covered by the insurance policy.

242. The regulatory authority should consider the maturity of the particular market; it should not go beyond what is necessary to achieve its purpose to balance prudential and market development objectives. In the agricultural sector, in particular, there has been an increase in insurance premium rates in recent years due to the frequency of losses, natural events, and the need for greater monitoring, among other factors. The regulatory authority should ensure that, in principle, the following aspects are addressed.

#### *Minimum coverage value*

243. The minimum coverage value is typically not specified in the legislation. Rather, its determination is delegated to the competent authority. The legislator may set a minimum limit that the insurance must cover and empower the authority to deviate upwards from this value. This approach provides flexibility to the competent authority to adjust the required amount over time. The legislation should then provide a minimum value that must be covered by the relevant insurance policy, which is usually equal to the maximum value of the goods stored in the warehouse at any given time.

244. It is essential to include in the complementary rules the warehouse operator's obligation to provide proof of the insurance to the depositor and the financier.

#### *Minimum events covered by insurance*

245. The legislation should also provide a list of events which must be covered by insurance policies taken out by warehouse operators. It is essential to cover liability in the case of an event outside the operator's sphere of influence. For example, legislation for agricultural products may require goods to be covered against fire and standard perils. A common categorisation of insurable risks would usually include fire and standard perils; burglary/theft; fidelity cover (i.e. against employee fraud); professional indemnity (i.e. against negligence). In some countries, according to context, separate coverage may be needed for civil unrest, political violence and terrorism.

246. The insurance policy must cover those events outlined in the relevant legislation, as well as any others agreed upon by the parties to an insurance contract. Alternatively, the insurance policy may provide coverage against "all risks" except for those specifically excluded. Such exclusions may relate to loss or damage from insects or vermin, extremes of temperature, wear and tear, rotting or moulding, breakage, marring or scratching, criminal acts, and acts of war. If this wording is used, it is necessary that the minimum events set out in the legislation are not excluded from the coverage of "all risks".

247. "All risks" policies provide better coverage in case of unforeseen events, which would reduce the risk of loss for depositors and any holders of warehouse receipts. It may, however, result in increased insurance premiums for warehouse operators due to the potential of unforeseen claims, which in turn would increase the cost of storage for the depositor. These factors should be taken into account by the parties when negotiating the insurance contract.

#### *Risk-reduction measures*

248. It is common for insurance companies to establish conditions for warehouse operators to obtain the corresponding policies, including having security measures that reduce risk. As framework conditions may change, it is important to ensure regular review and update. Accordingly, it is recommended to include a corresponding provision in the legislation, which could require warehouse operators to develop policies and procedures on basic safety, prevention and protection rules, which must be reviewed at least once a year.

249. Accordingly, the warehouse's policies and procedures on basic safety, prevention and protection must consider at least the following:



- the physical security of the facilities where the merchandise is stored;
- the local alarm system regarding intrusion, fire, or attack on the warehouses or premises where the goods are located and, as the case may be, the sending of the corresponding signals to the alarm center – this system must also have an electrical backup;
- the establishment and implementation of procedures to detect fraud or theft of goods, considering the control of access to warehouses or premises;
- the supply of sufficient lighting in the periphery and maneuvering areas of the warehouses or premises; and
- the security and protection of movable and immovable property, computer systems and personnel.

The price of warehouse insurance depends on the selected coverage (facilities, contents or optional coverage), the size of the warehouse, its location (industrial park, urban area or rural area), the age of the building, the most recent renovations and the security measures in place (such as doors, sensors, alarms, etc.).

#### *Scope of insurance coverage*

250. The basic coverage of insurance for warehouses includes coverage for the warehouse itself and its contents (i.e. goods). Considering the warehouse's contents, it is common for the description of the insured goods to include merchandise, raw materials, products in process, finished products, machinery, furniture, tools, accessories, and other equipment necessary for the operation of the insured's business. Accordingly, the legislation should include a provision that requires the description of the specific goods covered by the relevant insurance policy. This includes all inventories and/or stocks owned by the insured and/or third parties under their care, custody or control, for which they are legally responsible and which are located at the declared locations.

#### *Previously-insured merchandise*

251. In the operation of warehouses, it may be that merchandise being deposited is already covered by insurance taken out by the depositor. Based on the above, the legislation should determine whether the warehouse operator may contract the respective insurance directly, designating itself as the beneficiary of the policy that was issued for that purpose, or, in the case of previously-insured merchandise, obtain the corresponding endorsement of the respective policy contracted by the depositor in the warehouse operator's favor. In this regard, it is recommended that the enacting State include provisions for the endorsement of the corresponding policy in the relevant legislation. Finally, it is necessary to clarify in procedures what happens in the event of an insurance claim for damages in order to determine the amount of the corresponding compensation and avoid any disputes.

### **D. CENTRAL REGISTRY OF WAREHOUSE RECEIPTS**

252. There are no registry-specific provisions in the MLWR. However, an enacting State may develop additional rules for the establishment and maintenance of a registry to keep track of warehouse receipt transactions and warehouse receipts issued by warehouses at a central database. This section refers to central registries in which EWRs are registered and not to those registers which are used to record warehouse receipts that exist in paper form.

253. The enacting State should ensure that legislation is not overly prescriptive, since this may impede or forestall technological innovation. In order to develop an appropriate legal framework, the following aspects may be taken into consideration.

*Functions of the central registry and warehouse receipt transactions subject to registration*

254. The central registry functions may include registration of issued and transferred receipts, storage fees, transfers of warehouse receipts, etc. The enacting State may also provide for rules regarding recognized evidence of the information contained in the register, for example confirming valid registration, for example, a certificate of registration or message or number confirming registration.

255. The answer to the question of which warehouse receipt transactions should be registered depends on the type of warehouse receipts issued or used in the enacting State, the medium of those receipts (paper or electronic receipts) and the existing legal framework. The transactions that can be registered are issuance, transfer, and endorsements of receipts; settlement and delivery of goods; cancellation and surrender of receipts; loss or destruction of warehouse receipts; and replacement of warehouse receipts.

*The institution designated to undertake registration*

256. The legislation should provide for where the registry is to be situated and which entities are to undertake the functions of the registrar. This could either be a public institution or private entities under supervision of a public authority.

*The duty to register warehouse receipt transactions*

257. The legal framework may impose the duty on the warehouse operators to register the relevant transactions in view of the fact that they are the ones who issue the receipts and have the necessary systems and personnel to do so, making the process easier and more efficient. However, certain transactions, such as transfers may need to be registered by the parties to those transactions.

*Duties and features of the central registry*

258. The legislation may provide for the duties and features of the central registry that would ensure its efficiency and integrity in managing warehouse receipt transactions. Such duties should include:

- maintenance of a [register] [audit trail] of the relevant warehouse receipt transactions to ensure a comprehensive representation of all transfers for an appropriate time span after expiry of the respective warehouse receipt;
- security and risk management parameters to ensure the integrity of the receipts and transactions, including the performance of pre-checks before recording a transfer;
- generation of reports on transactions with warehouse receipts;
- capacity to handle warehouse receipts issued either electronically or in paper or both; and
- ability to provide authorized parties with access to its records.

*Accessibility of the central registry*

259. In addition to the registration of warehouse receipt transactions, the central registry could be accessed by authorized parties such as potential buyers and financial institutions to conduct due diligence on the status of the warehouse receipts. The legal framework may set out who these parties are and the access rights they hold in a way that ensures the confidentiality and security of warehouse receipts and facilitates faster, more efficient and transparent trade and access to credit.

## E. ELECTRONIC WAREHOUSE RECEIPTS

### *Introductory remarks*

260. Since the 1990s, there has been a global trend towards the implementation of EWRs. Today, trading of EWRs accounts for a steadily growing part of the trade in warehouse receipts as both industrial and a growing number of emerging countries introduced EWR systems. EWRs improve trading efficiency and facilitate credit by removing the need for the physical transfer of receipts and thus allowing for instantaneous, low-cost transactions. Furthermore, a warehouse receipts system based on trading EWRs provides, for instance, for a more secure method of transferring warehouse receipts.

261. Recognizing these advantages and the increasing relevance of EWRs, the MLWR itself follows a medium-neutral approach. Rules that are adopted complementarily to the implementation of the MLWR should also be designed in a medium-neutral way. Complementary to the MLWR, the enacting State may wish to consider adopting the MLETR to provide the necessary general legal framework for transferable documents or instruments that typically include not only warehouse receipts but also bills of lading, bills of exchange and promissory notes. The MLETR aims to “enable the legal use of electronic transferable records both domestically and across borders” and applies to electronic transferable records that are “functionally equivalent to transferable documents or instruments.” Articles 8 to 11 MLETR explicitly provide for the functional equivalence of paper-based and electronic transferable records regarding legal requirements referring to “writing” (art. 8 MLETR), “signature” (art. 9 MLETR), “transferable document or instrument” (art. 10 MLETR) and “possession” (art. 11 MLETR). With regard to provisions that refer to written documents, the following formulation could be used:

Where the law requires that information should be in writing, that requirement is met with respect to an electronic warehouse receipt if the information contained therein is accessible so as to be usable for subsequent reference.

262. Regarding provisions that refer to signature requirements, the following wording could be used:

Where the law requires or permits a signature of a person, that requirement is met by an electronic warehouse receipt if a reliable method is used to identify that person and to indicate that person’s intention in respect of the information contained in the electronic warehouse receipt.

263. Further, the enacting State may consider adopting rules generally referring to the concept of control and a general reliability standard in the context of EWRs. The text of these rules could read as follows:

For the purposes of [articles that refer to a “reliable method”], the method referred to shall be:

- a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:
  - (i) Any operational rules relevant to the assessment of reliability;
  - (ii) The assurance of data integrity;
  - (iii) The ability to prevent unauthorized access to and use of the system;
  - (iv) The security of hardware and software;
  - (v) The regularity and extent of audit by an independent body;
  - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;

(vii) Any applicable industry standard; or

b) Proven in fact to have fulfilled the function by itself or together with further evidence.

264. Also, it might be advisable to enact a rule regarding endorsements in the context of EWRs, for example:

Where the law requires or permits the endorsement in any form of a warehouse receipt, that requirement is met with respect to an electronic warehouse receipt if the information required for the endorsement is included in the electronic warehouse receipt and that information is compliant with the requirements set forth in [articles referring to writing and signature requirements].

265. Finally, the enacting State may consider adopting a rule regarding the indication of time and place in an EWR. Such a rule could read as follows:

Where the law requires or permits the indication of time or place with respect to a warehouse receipt, that requirement is met if a reliable method is used to indicate that time or place with respect to an electronic warehouse receipt.

266. From the principle of medium neutrality, it follows not only that the MLWR applies to both electronic and paper-based warehouse receipts, but also that the specific electronic medium on which an EWR is issued or saved is irrelevant in the application of the MLWR (principle of technology neutrality). In other words, the provisions of the MLWR make no distinction as to whether an EWR is created by an entry in a central register, whether it is issued as a token or whether it exists on any other currently existing or future technological basis. This neutrality has been ensured by deliberately designing the wording of the Model Law's provisions in a way that is not linked to specific technological designs or processes, but to actual phenomena. For example, the MLWR provisions do not refer to blockchain-specific terms (such as private key or public key), as this could affect the applicability of the Model Law to future technological bases of EWRs. Instead, the wording is based on actual concepts that are applicable to all EWRs, such as the concept of control (art. 3) or the concept of transfer of control (art. 15, para. 2).

267. When adopting rules regarding EWRs, the enacting State should consider ensuring consistency with other applicable law (e.g. laws on electronic commerce and electronic transferable records; anti money-laundering laws; counter terrorist financing laws; tax law) as well as other UNCITRAL Model Laws (e.g. MLEC, MLETR, MLST, Model Law on Electronic Signatures (MLES)). As stated in the introduction to this Guide, special care should be taken to prevent these requirements from altering the substantive rules applicable to warehouse receipts as per the MLWR as implemented in the legal system.

268. Finally, it should be noted that the following guidance is not intended to be exhaustive, but rather to direct the focus of rule-makers to certain important aspects to ensure the above-mentioned goals in the context of EWRs are achieved.

#### *Technology-related proposals*

269. The technology-related approach aims at the adoption of standards that do not (directly) prescribe a specific behavior but instead determine that the technology used as the basis of EWRs must comply with certain specifications and fulfill certain functions. In the course of developing such rules, the enacting State may particularly pay attention to those aspects that arise as a result of the technological particularities: the dynamic technological progress, the complexity and opacity of the functioning of the technological foundations of EWRs as well as the current special characteristics of distributed ledger technology. A law that contains very detailed specifications bears the risk of preventing technological innovations. Therefore, when designing technology-related rules, rule-makers may generally wish to aim to create an appropriate balance between ensuring the prerequisites for stable and trustworthy EWRs and granting private actors sufficient leeway for technological innovation. Further, as the potential for abuse varies depending on the EWR model

used, the enacting State may consider varying the content and level of detail of regulation depending on the chosen model. The degree of detail to which regulation is ultimately deemed necessary should be considered on a case-by-case basis, for example taking regard of the technology-specific risk of abuse, the traded commodity, or whether general rules regarding the respective technology have already been adopted.

270. Technology-related rules may be adopted as secondary law since the necessary technical expertise for regulation is typically more available on the part of the competent authority, and the rules have little impact on substantive rights. Moreover, as secondary law, such rules can be readily adapted to react to relevant developments by the competent authority without having to pass through the parliamentary process.

271. Proposals for complementary rulemaking regarding central registers are elaborated in chapter D of Part IV of this Guide.

272. First, market participants must be able to rely on the authenticity of an EWR. Thus, the enacting State should create rules requiring that the technology used as the basis for EWRs ensures that the unique identification number of an EWR is indeed unique and that an EWR cannot be forged.

273. Second, a further condition of acceptance of EWRs in practice is their integrity. Market participants will only use EWRs if they can trust that their content cannot be arbitrarily changed by unauthorized persons. The criterion for assessing integrity should be whether information contained in the electronic transferable record, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered, apart from any change which arises in the normal course of communication, storage, and display. Consequently, the enacting State should consider adopting rules ensuring the inalterability of certain information (e.g. date of issuance, unique identification number, goods-related information). Furthermore, provisions should determine that other information in an EWR can only be changed after authorization by the entitled persons and, potentially, only with simultaneous notification of the persons concerned; changes regarding an EWR's negotiability; name of the holder; period of storage; insurance-related information). Also, the enacting State may wish to adopt rules regarding the possibility of dynamically and automatically updating the information (e.g. quality, location) in EWRs ("dynamic EWRs"). Should the monitoring and collection of the changing information be automated as well, the EWR may be updated automatically (e.g. by a smart contract) without any human intervention. In this scenario, technological precautions should also be in place to ensure that only correct information is collected and updated and that certain information on the EWR stays inalterable.

274. Finally, agricultural producers and other market participants will only use EWRs if they can be confident that the technology through which the EWRs are issued, saved, and transferred is itself stable, reliable, and protected against unauthorized access.

#### *Operator-related rule proposals*

275. An operator-related approach is directed towards the enactment of complementary rules, which do not directly impose requirements on the technological design but place special personal requirements and duties of conduct on its operator. Since rules designed in view of this approach address the operating person or entity, the enacting State should pay special attention to the fundamental rights/duties of the operators when following the operator-oriented approach.

#### *Enforcement*

276. Violations of any rules concerning the operation and administration of the registry should be subject to a robust enforcement framework. The aim of enforcement should be to deter violations. Such deterrence is typically achieved through a combination of appropriate sanctions and an effective system for detecting violations. Possible sanctions could include, for example, the imposition of fines

as well as the refusal to issue a license to operate an EWR system, the suspension or revocation of a previously-issued license as well as a temporary or permanent ban on the issuance of a respective new license.

277. Particularly in the context of designing rules of enforcement regarding the regulation of token-based EWRs and in the context of their application, specific challenges arise. These result from the special characteristics of distributed ledger technology. Entities who are in control of a token-based EWR are typically only identifiable through a public key. In order to ensure effective enforcement, but also to fulfil the publicity function of a warehouse receipt and prevent money laundering, it should be ensured that the person or entity which is in control of a token-based EWR is identifiable. Therefore, the competent authority is not able to subsequently change the content of the distributed ledger, nor the holder of a token-based EWR neither by itself nor by instructions to the registrar. However, it should be noted that the specifics described in this paragraph are characteristic of the current form of distributed ledger technology.

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