



Model Law on Factoring
Guide to Enactment Working Group
First session (hybrid)
Rome, 8 – 10 April 2024

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DEVELOPMENT OF THE GUIDE TO ENACTMENT FOR THE UNIDROIT MODEL LAW ON FACTORING

I. INTRODUCTION

1. The purpose of this document is to outline the proposed structure, purpose, and method of work for the development of the Guide to Enactment (GtE) for the UNIDROIT Model Law on Factoring (MLF), for discussion by the Working Group at its first session.

II. BACKGROUND

2. At its 101st session (Rome, May 2022), the UNIDROIT Governing Council decided to recommend retaining the Model Law on Factoring as a high-priority project in the Institute's 2023-2025 Work Programme, in order to allow for the finalisation and adoption of the Model Law, and for the preparation of a Guide to Enactment for the Model Law. The UNIDROIT General Assembly subsequently approved the development of the GtE as a high priority project at its 81st session (Rome, December 2022).

3. At its 102nd session (Rome, May 2023), the UNIDROIT Governing Council adopted the UNIDROIT Model Law on Factoring and requested that the Secretariat undertake final proofing in order for both English and French language versions to be published within 2023.¹ The Council also requested that the Model Law on Factoring Working Group begin work on the UNIDROIT Model Law on Factoring Guide to Enactment.²

4. The ten experts in the Working Group held two initial planning discussions regarding the purpose, content and structure of the GtE. The first session was held at the International Law Institute Headquarters in Washington DC on 18 January 2024. The second session was held online on Monday 19 February 2024. The content of this document is based on the outcomes from these initial discussions.

¹ The official versions of the Model Law on Factoring are available on a dedicate webpage on the UNIDROIT website: <https://www.unidroit.org/instruments/factoring/model-law-on-factoring/>.

² See Governing Council 102nd session Summary Conclusions, UNIDROIT 2023 C.D. (102) Misc. 2, available <https://www.unidroit.org/wp-content/uploads/2023/06/C.D.-102-Misc.-2-Summary-Conclusions.pdf>, paragraph 6.

III. DEVELOPMENT OF THE GUIDE TO ENACTMENT

5. **Purpose:** The purpose of the Guide to Enactment is to assist States in understanding, implementing, and interpreting the provisions of the UNIDROIT Model Law on Factoring. As such, the Guide to Enactment seeks to explain the purpose of the Model Law, and the operation of the provisions.

6. **Audience:** The primary audience for the GtE is government officials in States considering implementing the Model Law on Factoring (who in many cases will be officials from the Central Bank, the Finance Ministry, Treasury, Justice Ministry, or the Legislative Drafting Department).

7. **Approach:** The MLF GtE will be the first Guide to Enactment produced solely by UNIDROIT. As such, the Working Group is not strongly bound by precedent in deciding the approach, content, and structure of the MLF. While the UNIDROIT Model Law on Factoring is substantially influenced and largely based on the rules in the UNCITRAL Model Law on Secured Transactions (MLST), the MLF GtE is not bound to follow the approach, content, and structure of the MLST GtE. It should be noted that there are substantial differences in the genesis between the two, which warrants deviations in the UNIDROIT MLF GtE.³

8. The GtE will be prepared in adherence with four guiding concepts:

- i. **Targeted** – The MLF GtE should focus on the providing information targeted to Government officials required for the implementation of the instrument.
- ii. **Accessible** – The MLF GtE should be drafted to be accessible as possible for non-experts, given that the target audience for the document will often lack deep expertise in factoring and receivables finance.
- iii. **Concise** – The GtE should be as concise as possible, to encourage government officials to utilise its content.
- iv. **Principles-based** – The MLF GtE should try to consistently refer to a few core principles that are essential for the successful implementation of the MLF and represent international best practice. Highlighting a few core principles and connecting the content of the GtE to the core principles should minimise the risk of the instrument being improperly implemented.

IV. OVERVIEW OF CONTENT AND STRUCTURE

9. Based on the Working Group's initial planning meetings, it is proposed that the MLF GtE the content and structure outlined below. Document Study LVIII B – W.G.1 – Doc. 3 provides a detailed summary of each proposed section of the GtE.

³ One significant difference between the MLST and the UNIDROIT Model Law on Factoring is the genesis of their coming into being. The MLST follows from the UNCITRAL Legislative Guide on Secured Transactions of 2010, and as such, the MSLT is drafted in accordance with the background framework that is the Legislative Guide in its formation, and which requires it to take into account provisions and discussions of the Legislative Guide. Conversely, the UNIDROIT Model Law on Factoring was not developed and drafted on the basis of a legislative guide, which affords the Working Group to operate without the confines of any such precedent document. A short analysis on the MLST Guide to Enactment is in **Annexe I** of this document.

PART I – PURPOSE AND OVERVIEW	
1.	Introduction to the MLF Guide to Enactment
2.	Factoring and receivables finance
3.	Introduction to the MLF
4.	Overview of the MLF
5.	[Coordination of the MLF with other international instruments]
PART II – IMPLEMENTATION OF THE MODEL LAW ON FACTORING	
1.	Implementation of the Model Law on Factoring within the existing legal framework
2.	Implementation of the Model Law on Factoring in different legal systems
PART III – COORDINATION OF THE MODEL LAW ON FACTORING WITH GENERAL LAW, REGULATION AND OTHER MATTERS	
1.	Coordination of the MLF with domestic law
2.	The Model Law on Factoring and the digital economy
3.	The Model Law on Factoring and Regulatory Matters
4.	Other Matters
PART IV – ARTICLE-BY-ARTICLE GUIDE	
1.	General instructions on reading the MLF
2.	Chapter I – Scope and General Provisions
3.	Chapter II – Transfer of a Receivable
4.	Chapter III – Effectiveness against third parties of a transfer of a receivable
5.	Chapter IV – The Registry System
6.	Chapter V – Priority of a Transfer
7.	Chapter VI – Rights and Obligations of the Transferor, Transferee, and the Debtor
8.	Chapter VII – Collection and Enforcement
9.	Chapter VIII – Conflict of Laws
10.	Chapter IX – Transition
11.	Annexe A – Registry Provisions
ANNEXES	
1.	Model Law on Factoring

V. WORKING METHODOLOGY AND WORKING GROUP COMPOSITION

10. The Guide to Enactment will be developed using [UNIDROIT’s standard working methodology](#). The expert Working Group that developed the Model Law on Factoring itself has been renewed to prepare the Guide to Enactment, under the Chairmanship of UNIDROIT Governing Council Member *ad honorem* Professor Henry Gabriel.

11. Intergovernmental organisations with expertise in the field of factoring participating as observers in the Working Group on the Model Law on Factoring are invited to continue to participate as observers in the Model Law on Factoring Guide to Enactment Working Group. The Members of the Working Group and invited observing organisations are set out in **Annexe II** of this document.

12. Under the guidance of the Working Group Chair, the Working Group will undertake its work in an open, inclusive, and collaborative manner. As consistent with UNIDROIT practice, the Working Group will not adopt any formal rules of procedure and seek to make decisions through consensus.

13. **Drafting approach:** Rather than asking each Working Group member to draft a section each of the Guide to Enactment, the Working Group has created small “review teams” for each section. Each review team will be responsible to decide on the content and structure of each section. Each review team works with a primary drafter, who will prepare the actual draft chapter, for review by the Working Group. Each review team will also provide feedback on their assigned sections. Under this model, each Working Group member is responsible for providing advice on several different parts of the GtE, however only three Working Group members “hold the pen”.⁴

14. Drafters will also be guided by the notes from the Secretariat, derived from discussions during previous Working Group meetings. Observing organisations will have the opportunity to provide feedback on each section during Working Group meetings, and may request or be invited to participate in the drafting of certain sections.

15. This drafting approach will make it easier to prepare a document with a consistent style and voice, while still ensuring that all Working Group members are actively involved in the drafting of the document.

⁴ Louise Gullifer and Neil Cohen will be the primary drafters, with some drafting assistance from Bruce Whittaker and the Secretariat on certain sections.

ANNEXE I**STRUCTURE AND APPROACH OF THE UNCITRAL MODEL LAW ON SECURED TRANSACTIONS**

1. As the UNIDROIT Model Law on Factoring takes into account, complements, and is designed to be legally consistent with the UNCITRAL Model Law on Secured Transactions (MLST), it may be useful to briefly consider and assess the MLST Guide to Enactment and its approach.
2. The MLST Guide to Enactment consists of a short introductory section including explanations of the purpose of both the MLST and its Guide to Enactment, brief explanation of the MLST as a tool for modernizing and harmonizing laws, the main features of the MLST and guidance on how the MLST should be interpreted. This is followed by article-by-article explanations on the MLST, which form the bulk of the MLST Guide to Enactment.
3. While there are substantial features of the MLST Guide to Enactment which may serve as useful references for the MLF Guide to Enactment, there are three points where it might be appropriate for the MLF GtE to adopt a different approach to the MLST GtE:
 - i) First, it is suggested that the MLF GtE deal with some broad, thematic issues applicable to the entirety of the law (for example, the relationship between the MLF and regulatory issues, and the relationship between the MLF and the broader domestic law in the implementing State.
 - ii) Second, the article-by-article section of the MLF GtE should avoid general restatements of the provisions of an article and should only provide additional information that will provide benefit to officials responsible for implementing the mode law.
 - iii) Third, the MLF GtE will not require the same level of cross-references that the MLF GtE has, as there is no underlying legislative guide.

Structure of the UNCITRAL Model Law on Secured Transactions Guide to Enactment

- I. Purpose of the MLST Guide to Enactment
- II. Purpose of the MLST
- III. MLST as a tool for modernizing and harmonizing laws
- IV. Main Features of the MLST
 - a. Relationship of the MLST with the secured transactions texts of UNCITRAL
 - b. Key objectives, fundamental policies and implementation of the MLST
- V. Assistance from the UNCITRAL secretariat
 - a. Assistance in drafting legislation
 - b. Information on the interpretation of legislation based on the MLST
- VI. Article-by-article remarks
- VII. Annexe I – MLST UN decision
 - a. UNCITRAL Model Law on Secured Transactions: Decision of the Commission
 - b. UN General Assembly Resolution 71/136
- VIII. Annexe II – MLST GtE UN decision
 - a. MLST Guide to Enactment Decision of the Commission

ANNEXE II**MEMBERS OF THE UNIDROIT MLF GUIDE TO ENACTMENT WORKING GROUP**

1. Henry GABRIEL — Professor of Law, Elon University, United States of America
2. Giuliano CASTELLANO — Associate Professor, Asian Institute of International Finance Law (AIIFL), Hong Kong
3. Neil COHEN — Professor of Law, 'Jeffrey D Forchelli' Brooklyn Law School, United States of America
4. Michel DESCHAMPS — Université de Montréal, McCarthy Tetrault, Canada
5. Marek DUBOVEC — Director of Law Reform Programs, International Law Institute, United States of America
6. Alejandro GARRO — Adjunct Professor of Law, Colombia Law School, United States of America
7. Louise GULLIFER — Rouse Ball Professor of English Law, University of Cambridge, United Kingdom
8. Megumi HARA — Professor of Law, Chuo University, Japan
9. Catherine WALSH — Professor of Law, McGill University, Canada
10. Bruce WHITTAKER — Senior Fellow, University of Melbourne, Australia

1. In addition, several international, regional and private organisations which participated in the negotiation of the UNIDROIT MLF have been invited to also participate in the development of the Guide to Enactment:

1. The World Bank Group (WBG)
2. The United Nations Commission for International Trade Law (UNCITRAL)
3. The Kozolchyk National Law Centre (NatLaw)
4. The European Bank for Reconstruction and Development (EBRD)
5. The Organization of American States (OAS)
6. The African Export-Import Bank (AFREXIMBANK)
7. Organisation for the Harmonisation of Business Law in Africa (OHADA)
8. Industry Groups
 - i. Factors Chain International (FCI)
 - ii. International Chamber of Commerce Banking Commission (ICC)
 - iii. Secured Finance Network (SFN)
 - iv. World of Open Account (WOA)