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Item No. 5 on the agenda: Update on certain high-priority projects on the 2023-2025 Work Programme

(a) Model Laws and Guides to Enactment:

iii. UNCITRAL/UNIDROIT Model Law on Warehouse Receipts and Guide to Enactment

(prepared by the Secretariat)

<i>Summary</i>	<i>Update regarding the progress on the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project and submission of the draft Guide to Enactment to the Model Law for approval</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress made on the project since its last session in May 2023</i> <i>Moreover, the Governing Council is invited to approve the draft Guide to Enactment to the Model Law on Warehouse Receipts (as enclosed in Annexe II)</i>
<i>Mandate</i>	<i>Work Programmes 2020-2022 and 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<u>UNIDROIT 2020 – G.C. (99) A.8</u> ; <u>UNIDROIT 2020 – G.C. (99) A.2</u> ; <u>UNIDROIT 2020 - G.A (79) 10</u> ; <u>UNIDROIT 2021 G.C. (100) B.24</u> ; <u>UNIDROIT 2022 – G.C. (101) 8</u> ; <u>UNIDROIT 2022 G.C. (101) 21</u> ; <u>UNIDROIT 2022 A.G. (81) 9</u> ; <u>UNIDROIT 2023 – G.C. (102) 4</u> ; <u>UNIDROIT 2023 – G.C. (102) 25</u> ; <u>Study LXXXIII A – W.G.1 – Doc. 3</u>

1. The purpose of this document is to update the Members of the Governing Council on the progress made on the Model Law on Warehouse Receipts Project since the 102nd session of the Governing Council in May 2023, to receive its feedback on the amendments of the text adopted at the said meeting, as well as to invite the Council to approve the draft Guide to Enactment to the Model Law on Warehouse Receipts.

I. BACKGROUND OF THE PROJECT

2. Upon proposal by the Secretariat to the Governing Council at its 99th session in April-May 2020, the Council unanimously agreed to recommend that the General Assembly include the drafting, jointly with UNCITRAL, of a Model Law on Warehouse Receipts as a new project with high-priority status in the 2020-2022 Work Programme, subject to approval of a parallel mandate by the UNCITRAL Commission ([C.D. \(99\) A.8, para. 21](#)). UNCITRAL's Commission approved the project at its 53rd session in September 2020 ([UN Doc. A/75/17](#)). The General Assembly of UNIDROIT then approved the recommended inclusion of the proposed project with high-priority status in the Work Programme at its 79th session in December 2020 ([A.G. \(79\) 10, paras. 39 et seq. in conjunction with para. 47](#)).

3. The aim of the project was to develop a Model Law, accompanied by a Guide assisting in its implementation, to support States in designing state-of-the-art warehouse receipt legislation covering both electronic and paper warehouse receipts. Warehouse receipts are documents, in paper or in electronic form, issued by warehouse operators that state the ownership of a commodity and may be traded or used as collateral to obtain credit. A supportive legal framework is widely regarded as a prerequisite for a well-functioning warehouse receipts system that can foster transactions and facilitate access to finance, especially in the agricultural sector and with particular importance for small entrepreneurs.

4. The project was designed in two phases. First, the tentative calendar for the implementation of the project anticipated that the preparation of the first draft for the proposed Model Law would take place over four in-person sessions (2020-2022) of a UNIDROIT Working Group, followed by the adoption by the Governing Council of the complete draft to be sent to UNCITRAL at its 101st session in May 2022. At the 100th session of the Governing Council in September 2021, the theoretical complexity of the project that had emerged during the Working Group's discussions based on important structural differences concerning the jurisdictions' approaches to various aspects of warehouse receipts caused the Council to authorise the extension of the project for one calendar year, and to schedule the adoption by the Governing Council of the complete draft foreseen at its 102nd session in May 2023 ([C.D. \(100\) B.24](#), para. 101). In the second phase, upon approval by the Governing Council, the draft Model Law would be submitted for intergovernmental negotiations through an UNCITRAL Working Group.

5. Furthermore, in parallel to the discussion of the draft Model Law at UNCITRAL, the UNIDROIT Working Group would develop a Guide to Enactment to the Model Law, as authorised by the Council at its 101st session in June 2022 ([C.D. \(101\) 21](#), para. 223). Such Guide to Enactment would not only explain the provisions included in the Model Law text to legislators seeking to implement it into domestic legislation, but also provide guidance on the preparation of implementing regulations and other subsidiary legislation.

6. Consequently, at its 101st session, the Governing Council recommended that the General Assembly retain the drafting of a Model Law on Warehouse Receipts in the 2023-2025 Work Programme as a high-priority activity until its final completion: for the text of the Model Law in 2023, and for the Guide to Enactment in 2024 ([C.D. \(101\) 21](#), para. 224). The General Assembly approved the recommendation (see [A.G. \(81\) 9](#), para. 67).

II. DEVELOPMENT OF THE DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

Phase 1: Preparation of the draft Model Law and Guide to Enactment by UNIDROIT Working Group

7. As consistent with the Institute's established working methodology, the draft Model Law was developed by a Working Group whose components were selected based on their expertise related to warehouse receipt legislation, chaired by Governing Council Member Professor Eugenia Dacornia. The experts participated in a personal capacity and represented different legal systems and geographical

regions. In addition, several intergovernmental organisations with interdisciplinary expertise in the field of warehouse receipt systems were invited to participate in the Working Group as observers, to assist in both the development and the implementation of the Model Law once it had been adopted. These organisations included, among others, the Food and Agriculture Organization of the United Nations (FAO), the Organization of American States (OAS), the United Nations Conference on Trade and Development (UNCTAD), and the World Bank Group (WBG). Moreover, several public and private sector stakeholders were invited to participate in the Working Group as observers, to ensure the instrument addressed stakeholders' needs.¹

8. The Working Group developed the draft Model Law over a total of six sessions held between 2020 to 2023. The Governing Council received detailed updates from the Secretariat on the first four sessions of the Working Group at the 101st session in June 2022 (see [C.D. \(101\) 8](#)), and on the fifth and sixth session at the 102nd session in May 2023 (see [C.D. \(102\) 4 rev.](#)). The corresponding summary reports of the Working Group meetings and relevant documents are available on the dedicated [project page](#) on the UNIDROIT website.

9. Following the sixth session of the Working Group, the Secretariat presented a final draft of the Model Law on Warehouse Receipts to the Governing Council at its 102nd session on 10-12 May 2023 (available in the Annexe to document [C.D. \(102\) 4 rev.](#)). The Governing Council unanimously adopted the draft Model Law as presented and agreed to its submission to UNCITRAL for State negotiations and completion (see [C.D. \(102\) 25](#), para. 80).

10. Following adoption of the draft Model Law by the UNIDROIT Governing Council at its 102nd session and based on the work of the Group over the previous two years, the UNIDROIT Working Group, in close collaboration with the Secretariat, has prepared a comprehensive draft of the Guide to Enactment for the Model Law. Important preparatory work had already been undertaken for the Guide in parallel over the course of the drafting of the Model Law, when references to the need to include specific parts in the Guide were frequent and duly recorded.

11. The first comprehensive draft for the Guide was circulated to the UNIDROIT Working Group for review and was discussed during several remote intersessional meetings. Throughout the process, the Secretariats of both UNIDROIT and UNCITRAL collaborated closely in order to carefully ensure that the draft Guide reflected any modification made to the Model Law text during and following its negotiations at UNCITRAL's Working Group I. Subsequently, one session of the Working Group was held to discuss the entire draft Guide to Enactment on 13–15 November 2023, during which final modifications were agreed upon and implemented in the draft text. The report of the Working Group session is contained in [Study LXXXIII A – W.G.1 – Doc. 3](#).

12. After the session, the draft Guide was sent to the UNCITRAL Secretariat for consideration by Working Group I as envisaged.

Phase 2: Negotiation of the draft Model Law and Guide to Enactment by UNCITRAL Working Group I

13. Following the approval of the draft Model Law by the UNIDROIT Governing Council, the draft Model Law was submitted to UNCITRAL for intergovernmental negotiation, where it was assigned to Working Group I.

14. Two sessions of Working Group I were dedicated to the consideration of the draft Model Law. The first session took place on 25-29 September 2023 in Vienna, where delegates and observers of UNCITRAL Working Group I discussed the draft Model Law text. UNIDROIT was represented in the Working Group by the Secretariat, providing background information on the process and considerations

¹ The complete list of invited participants of the Working Group is available on the dedicated [project page](#).

during the preparation of the draft Model Law text by the UNIDROIT Working Group. Delegates and observers expressed their appreciation for the text prepared by the UNIDROIT Working Group and discussed the text article by article.

15. Following the session, the UNCITRAL Secretariat incorporated the outcome of the discussions in the Model Law text, which led to merely minor modifications, leaving the structure of the draft Model Law unchanged. However, as requested by the UNCITRAL Working Group, the Secretariat prepared two alternative Model Law versions for consideration, implementing the functional equivalence and the medium neutrality approach, respectively. The former approach had been adopted by previous UNCITRAL model laws, whereas the latter had been chosen and implemented by the UNIDROIT Working Group in the draft Model Law, as it treated both electronic and paper receipts on equal footing and was therefore considered more forward looking with regard to the increasing importance of the electronic format.

16. The revised Model Law text was submitted again to Working Group I for consideration at its meeting in February 2024 at UN Headquarters in New York, where the Group also considered the draft Guide to Enactment. The UNIDROIT Secretariat was represented at the session. Delegates and observers considered the revised draft Model Law and Guide to Enactment, and they approved both texts subject to further modifications agreed upon during the meeting. Importantly, the Group agreed on retaining the medium neutrality approach.

17. At the end of its 41st session, Working Group I agreed to recommend the Model Law with the Guide to Enactment to the UNCITRAL Commission for adoption at its 56th session on 24-12 July 2024. The latest texts of both the Model Law and the Guide, which are currently being circulated by the UNCITRAL Secretariat to experts and Member States for final comments, are enclosed in Annexe I and II to this document, respectively. The Model Law is provided as a red line version in order to allow Governing Council Members to easily identify the changes made to the text that had been approved by the Council at its last session in May 2023.

III. OVERVIEW OF THE DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

18. The purpose of the Model Law and its accompanying Guide is to assist States in developing state-of-the-art warehouse receipt legislation supporting the issuance and transfer of both electronic and paper-based receipts. The Model Law is intended to guide States that currently do not have enabling warehouse receipt laws, as well as to States that already have such laws but seek to modernise them – for instance to support the use of electronic warehouse receipts.

Model Law on Warehouse Receipts

19. The Model Law is conceived as a stand-alone instrument for adoption by States. It consists of a set of black-letter rules covering all the essential aspects necessary to regulate the private law side of a warehouse receipts system, including the issuance and transfer of warehouse receipts and the rights and obligations of the parties.

20. The Model Law is compatible with both civil and common law systems. Accommodating different legal traditions with regard to the format of warehouse receipts, the Model Law allows for both single and dual warehouse receipt systems. Moreover, the Model Law is harmonised with the approaches and terminology adopted in other relevant international instruments, including the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, the UN Convention on International Bills of Exchange and International Promissory Notes, and the UNCITRAL Model Laws on Secured Transactions and Electronic Transferable Records.

21. The scope of the Model Law covers both paper-based and electronic warehouse receipts that are issued for any kind of goods, not being limited to agricultural goods. Importantly, the Model Law

contemplates the issuance and transfer of electronic warehouse receipts, including using electronic platforms, distributed ledger technology systems, and other technological mechanisms.

22. The Model Law is organised into six chapters:

Chapter I	Scope and general provisions
Chapter II	Issuance 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

23. The structure and contents of the Model Law were presented to the Governing Council at the 102nd session in 2023 (see [C.D. \(102\) 4 rev](#), para. 19) and have for the most part remained unchanged throughout the State negotiations on the text at UNCITRAL.

Revisions to the draft Model Law on Warehouse Receipts made following the State negotiations at UNCITRAL

24. The structure of the Model Law including the organisation into the six chapters listed above, as well as the sequence of the matters addressed throughout the Model Law text, have remained unchanged at UNCITRAL. As to the content of the Model Law, the below paragraphs aim to offer an explanation of the main modifications that were made to the draft articles during the second phase of the project at UNCITRAL. All modifications are highlighted in the red line version of the draft Model Law, enclosed in Annexe I to this document, which shows the changes made at UNCITRAL to the text that had been approved by the UNIDROIT Governing Council in May 2023. It is the opinion of the Secretariat that changes are adequate and do not deviate from the essential elements of the draft approved at UNIDROIT.

Approach to electronic warehouse receipts

25. Notably, the underlying approach to addressing electronic warehouse receipts on the same footing with paper warehouse receipts based on medium neutrality was maintained. This approach to electronic records deviates from the functional equivalence approach that has traditionally been adopted by UNCITRAL texts, including the UNCITRAL Model Law on Electronic Transferable Records (MLETR), and therefore had been subject to discussion at UNCITRAL. Ultimately, State delegations considered medium neutrality as the more forward-looking approach which also took into consideration that electronic receipts were no longer considered as a secondary form that ought to replicate the characteristics of paper receipts to be recognised as legally equivalent.

26. As to the content of the provisions with regard to electronic warehouse receipts, the Model Law was streamlined to fully implement the medium neutrality approach. This prompted several additions throughout the draft text:

- (i) In article 2, the definition of a “holder” of an electronic warehouse receipt was expanded to mirror the definition of a holder of a paper receipt, namely to distinguish between a receipt issued to the order of a named person, and a receipt issued to bearer or endorsed in blank. In both cases, the holder remains the person in control of the receipt, and no substantive change resulted from the modifications. Furthermore, Variant 2 was added to propose an alternative definition of “holder” which would streamline the treatment of electronic and paper receipts using “control” for both forms (see. Variant 2 for paragraph 2, lit. (a)). The same additions were made to the definition of the “holder” of a pledge bond in article 32, which mirrors the

definition of a holder of a warehouse receipt, including a corresponding Variant 2 for the holder of a pledge bond.

- (ii) Article 3 (“Control of an electronic warehouse receipt”) was deleted as a separate article and its content integrated into the more elaborate provisions contained in Articles 6 and 7 on “Electronic warehouse receipt” and “General reliability standard for electronic warehouse receipts”, respectively. The detailed provisions were adopted from the MLETR: Article 6 combines articles 10 and 11 MLETR, and article 7 literally adopts article 12 MLETR.

Chapter I: Scope and general provisions

27. The self-identification of the receipt as a “warehouse receipt” was moved from the definition of a warehouse receipt in article 1, paragraph 2, to become a mandatory element to be included in the receipt according to article 10 (“Information to be included in a warehouse receipt”). Apart from that, the information listed in article 10 remained largely unchanged, except that further information was added that needed to be included in the receipt, namely under subparagraph (h) “The existence of any rights or claims of third parties to the goods notified by the depositor to the warehouse operator pursuant to article 8, subparagraph (c)”. Paragraph 2 of the revised article 10 was modified to refer to liability “under other law” for incomplete or incorrect statements of information, rather than establishing directly the warehouse operator’s liability for any losses suffered as a result of such a statement. The corresponding paragraph 2 of article 11 for additional information that may be included in a warehouse receipt was revised accordingly.

28. For article 3 (“Party autonomy”), whereas the draft Model Law as prepared by the UNIDROIT Working Group had offered two alternatives to enacting States to choose from regarding the admissibility of derogations or variations from the Law by the parties, the revised version now adopts the first option, with merely editorial changes, rather than offering two options.

Chapter II: Issuance and contents of a warehouse receipt; alteration and replacement

29. Article 5 maintains the obligation to issue a warehouse receipt, while its former paragraph 2, which stipulated that the lack of issuance of a warehouse receipt does not affect the storage agreement’s validity, was deleted.

30. The “Representations by the depositor” in article 8 were enlarged towards the subsequent holders, to also include that the operator represents that it had the authority to request the issuance of a warehouse receipt.

31. Article 9 (“Incorporation of storage agreement in the warehouse receipt”) was modified from prescribing that a warehouse receipt by the Law includes the terms of the storage agreement, to the optional possibility for the receipt to state that it includes some or all of those terms.

32. Former Article 12 on the alteration of a warehouse receipt was deleted without substitution.

33. Article 13 on the “Loss or destruction of a warehouse receipt” was elaborated to submit the right to require the warehouse operator to issue a replacement warehouse receipt to the proof of the loss or destruction, and reimbursement of reasonable costs for the replacement. The remaining changes to paragraph 1 are editorial. The reference to the deposit of security with the Court in paragraph 3 was deleted. Paragraph 5 was added to clarify, in particular, that 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.

Chapter III: Transfers and other dealings in negotiable warehouse receipts

34. Chapter III addressing transfers and other dealings in receipts remained largely unchanged. The subheadings for sections under the chapter were deleted, without modifying the articles thereunder. An option 2 was added under article 18 that proposes a different presentation of the provision with the aim to enhance its clarity, without however changing its content.

Chapter IV: Rights and obligations of the warehouse operator

35. Former draft article 23 (“Application of this Chapter”) was deleted without substitution, as it was considered neither necessary nor helpful.

36. Article 23 (“Duty of care”) was revised to explicitly state that any clause limiting the duty of care or the operator’s liability for fraud, wilful misconduct, gross negligence, or misappropriation of the goods should be null and void. A sentence was added to clarify that the invalidity of such a clause shall not affect the validity of the warehouse receipt as such.

37. Draft article 28 (“Split warehouse receipt”) was modified from a (voluntary) option for, to an obligation of the warehouse operator to split the warehouse receipt upon request by the receipt holder if the conditions determined in the article are met. The payment of the costs for the split was added to those conditions. Paragraph 2 was added to require the warehouse operator to cancel the original warehouse receipt.

38. Concerning article 30 (“Termination of storage by the warehouse operator”), the provisions captured by paragraphs 1 and 2 were reordered to address the notice by public advertisement in paragraph 2 separately, referring to the other law as specified by the enacting State for the procedure. Paragraph 3 was added to account for the situation where the warehouse operator in good faith determines that, within the time provided in subparagraph 1(a), the goods are about to deteriorate or decline in value to less than the amount secured by its lien and allows the operator to sell the goods in accordance with subparagraph 1(b).

Chapter V: Pledge bonds

39. Article 31 (“Scope of provisions on pledge bonds”) was revised to merely state that the chapter governs the effects of the pledge bond once transferred separately from the warehouse receipt. The description of a pledge bond in the former paragraph 2 of the article was incorporated into article 32 (“Issuance and form of a pledge bond”), and paragraph 3, which referred to the former article 3 on the control of an electronic warehouse receipt (which was moved to the more detailed provisions on electronic warehouse receipts in the revised text), was deleted.

40. Article 32 was revised to include elements of the definition of a pledge bond in paragraph 1. Furthermore, as previously stated, the definition of a “holder” of a pledge bond in article 32, paragraph 3 was revised according to the revision of the definition of a “holder” of a warehouse receipt.

41. Article 33 (“Effect of a pledge bond”) was revised to require in paragraph 2 that the holder of the pledge bond shall surrender it to the receipt holder in case of payment of the amounts secured by the pledge bond.

Chapter VI: Applications of this Law

42. No substantive changes were made to the provisions under this chapter.

IV. OVERVIEW OF THE DRAFT GUIDE TO ENACTMENT TO THE MODEL LAW ON WAREHOUSE RECEIPTS

43. The Guide to Enactment for the Model Law contains article-by-article commentary of the Model Law provisions, on the one hand, and guidance on complementary legislation, on the other.

44. Accordingly, the Guide 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

45. After Part I sets out the purpose of the Guide, Part II introduces the Model Law, explaining the background and drafting history, as well as the Model Law's purpose, scope and structure. It also elaborates on electronic warehouse receipts, financing practices involving warehouse receipts, and private international law issues related to the Model Law.

46. Part III provides comprehensive commentary on the individual provisions of the Model Law. It explains the background and purpose of each provision; how they should be interpreted and applied; and the relationship with the more general legal framework of a State enacting the Model Law that might be relevant for their application.

47. Part IV offers guidance on the development of complementary rules to effectively implement the provisions of the new warehouse receipts law at domestic level. As such, this Part goes beyond the scope of the Model Law to provide guidance on designing regulatory aspects of a warehouse receipt system, 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. Accordingly, the Part describes rules on the licensing and supervision of warehouses and warehouse operators; rules on mandatory insurance policies that the enacting State may require the warehouse operator to have for the infrastructure and goods intended for storage, professional indemnity or third-party liability insurance; and 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.

48. The text of the Guide to Enactment to the Model Law as recommended to the UNCITRAL Commission is enclosed in Annexe II to this document. It is noted that the draft Guide has been shared by UNCITRAL with Member States for comments and will still be subject to revision. To date, the structure of the Guide as prepared by the UNIDROIT Working Group has remained unchanged.

V. NEXT STEPS

49. The Model Law on Warehouse Receipts with the Guide to Enactment are recommended to the UNCITRAL Commission for adoption at its 56th session on 24-12 July 2024.

50. Following the adoption of the Model Law and Guide to Enactment, the Secretariats of UNIDROIT and UNCITRAL envisage joint dissemination activities. The Institute's Secretariat has also started liaising with associated experts and organisations that participated in the UNIDROIT Working Group on the Model Law concerning potential promotion activities.

VI. ACTION TO BE TAKEN

51. *The Governing Council is invited to take note of the progress made on the joint UNCITRAL/UNIDROIT Model Law on Warehouse Receipts Project and express its view on the final text.*

52. *Furthermore, the Council is invited to approve the draft Guide to Enactment to the Model Law on Warehouse Receipts (as enclosed in Annexe II).*