



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

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**SUMMARY OF MATTERS REFERRED FOR CONSIDERATION IN THE MLF GUIDE TO
ENACTMENT
BY THE MODEL LAW ON FACTORING WORKING GROUP (2020 – 2022)**

I. INTRODUCTION

1. The purpose of this document is to provide the Model Law on Factoring (MLF) Guide to Enactment (GtE) Working Group with a summary of the matters which the Model Law on Factoring Working Group suggested should be considered in the GtE. This document should be considered in conjunction with the GtE Section Summaries (Study LVIII B – W.G.1 – Doc. 3).

II. MATTERS REFERRED

2. The MLF was negotiated over six Working Group sessions between 2020 and 2022. During those negotiations, a number of matters arose which the Working Group suggested should be explained in the Guide to Enactment. The Reports from the six Working Group sessions identified those matters which the Working Group referred to the Guide to Enactment.

3. Following the adoption of the MLF in May 2023 and its subsequent publication in September 2023, the Secretariat identified 139 matters from the Working Group Reports referred to the Guide to Enactment. Upon further review, the Secretariat determined that 27 of the referred matters did not require further consideration, primarily because they related to matters considered during earlier Working Group meetings that subsequently became obsolete in the final text of the MLF.

4. The Secretariat then ordered and grouped the referred matters in relation to the structure of the GtE, in order to make the referred matters easier for the GtE Working Group to consider. The Secretariat also prepared some initial observations on the referred matters.

5. The table below sets out the referred matters as they relate to the different sections of the future GtE. Each referred matter contains (i) a summary of the matter referred, (ii) the Working Group Report reference,¹ and (iii) the Secretariat's observation (in red). Some of the referred matters have already been considered and implemented into the Section Summaries (Doc. 3), whereas others will require further consideration once the drafting of the GtE begins.

¹ All MLF WG Reports can be accessed at <https://www.unidroit.org/instruments/factoring/model-law-on-factoring/preparatory-works/>.

UNIDROIT Model Law on Factoring Guide to Enactment (GtE)

Summary of matters referred for consideration in the GtE by the MLF Working Group (2020 – 2022)

#	Title	Content/notes
PART I – PURPOSE AND OVERVIEW		
1	Introduction to the MLF Guide to Enactment	<p>Introduce the instrument, explain why it has been drafted.</p> <p>(Referral item: 42)</p> <p>42. The Working Group agreed that it was important for the MLF to incentivize typical factoring transactions, rather than forcing jurisdictions to practice types of transactions which closely resembled factoring but were of a different nature. The Working Group had also agreed to reflect mandatory rules [on factoring and related transactions, such as negotiable instruments] in the Commentary. (Report Session 2, Para. 150)</p> <p>[Secretariat Observations: We think this suggestion should be included in the GtE to clarify the scope of MLF and give a more specific reason about why negotiable instruments should be excluded.]</p>
2.	Factoring and receivables finance	<p>Introduce business practices, explain what factoring and receivables finance is, types of factoring arrangements.</p> <p>(Referral items: 28, 31)</p> <p>28. As deposit account control agreements were an essential element of financing receivables, it was suggested that the Guide to Enactment could clarify that parties would be able to enter into a control agreement with respect to a bank account, the effects of which would be governed by another law. (Report Session 5, Para. 24)</p> <p>[Secretariat's Observations: As deposit account control agreements were an essential element of financing receivables, it was suggested that the Guide to Enactment could clarify that parties would be able to enter into a control agreement with respect to a bank account, the effects of which would be governed by another law.]</p> <p>31. Since Article 34 of the MLST correctly allowed a transferee to authorize the outright transfer or security transfer to a third party, it was suggested that the Guide to Enactment should address the similar matters by allowing the parties to a factoring agreement to achieve the same result with party autonomy through Article 3(1) of the MLF. (Report Session 5, Para. 15)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE in the business practice section as it appears to concern practitioners and not legislators.]</p>
3.	Introduction to the MLF	<p>a. Highlight risks arising from weak legal framework</p>

		<p>b. Core legal principles of the MLF</p> <p>c. Economic and other benefits (societal benefits, fraud prevention etc)</p> <p>(Referral items: 19, 23)</p> <p>19. (1) A Working Group Member highlighted the importance of payables finance for MSMEs and suggested that they be addressed in some detail in the MLF commentary. (2) A Working Group Member agreed that payables finance was particularly important in emerging markets. There was no need to signal that payables finance was within the scope of the instrument in the black letter rules themselves, although it would be useful for the commentary to include an explanation of the practice. (3) The Working Group noted that the commentary to the MLF should provide further guidance to States describing the operation of payables finance. ((1) Report Session 1, Para. 177. (2) Report Session 1, Para. 178. (3) Report Session 1, Para. 185)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of guidance around the full scope of the MLF could be useful for enacting States as they implement the model law into their existing domestic legal framework. This suggestion should be included in the Economic benefits section and include the EBRD MSMEs new finance guide which references the MLF to support this section.]</p> <p>23. A Working Group Member suggested that the Guide to Enactment provide guidance on the relationship between future receivables and fraud. (Report Session 3, Para. 28)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE by having the industry provide a couple of paragraphs on fraud prevention.]</p> <p>Set out the core legal principles of the MLF, which States should adhere to (and will be explained/referred to throughout the article-by-article commentary in Part IV). The economic and other benefits section will be very short (1 page or so).</p> <p>(Referral items: 14, 18)</p> <p>14. A Working Group Member agreed with the need to ensure that the MLF applied to transactions such as reverse factoring, supply chain finance, and recourse factoring, and suggested that this could be accomplished by references to relevant ICC definitions of these concepts in the Commentary, rather than including these items in the MLF itself. Another Working Group Member agreed with this proposition, noting the risks associated with trying to define various types of transactions. With regard to scope, they supported that the MLF should have a wide scope in terms of the present and future types of factoring it would apply to. The Commentary would need to give additional guidance on this matter. (2) The Working Group agreed</p>
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		<p>that the MLF would apply to both recourse and non-recourse factoring but would leave the definition of these terms to the commentary. ((1) Report Session 2, Para. 230. (2) Report Session 1, Para. 96)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of guidance could be useful in giving enacting States a good look at the full scope of the MLF and its implication beyond the black letter law.]</p> <p>18....the MLF or the commentary should clarify that the services provided by the factor could be much broader than just the transfer of receivables. (Report Session 1, Para. 122)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of guidance around the full scope of the MLF could be useful for enacting States as they implement the model law into their existing domestic legal framework.]</p>
4.	Overview of the MLF	Short chapter-by-chapter overview of the MLF, factual and legal in approach (not a sales pitch), set out the most important aspects of each Chapter.
5.	<p>[Coordination of the MLF with other international instruments]</p> <p>Section is bracketed – Working Group may decide to remove once it has been reviewed.</p>	<p>Very brief explanation of relationship with:</p> <p>Factoring Convention</p> <p>Assignment Convention</p> <p>(Referral item:41)</p> <p>41. A Working Group Member noted that Article 11(3) of the Receivables Convention indicated that international trade usages were binding as long as they were well known. Such an indication should also be reflected in the Commentary to the MLF. (Report Session 2, Para. 68)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as if international trade usages are still meant to be binding that would seem to be valuable for enacting States to be aware of.]</p> <p>Model Law on Secured Transactions</p> <p>Make section short and ensure it does not generate concern or confusion for implementing States.</p> <p>(Referral number:8,12)</p> <p>8. Cross-references to other instruments should also be made part of the Commentary to the MLF and that the MLF should be drafted using simple language to ensure large-scale adoption. (Report Session 2, Para. 236)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE because so much of the MLF is borrowed from other instruments such a table of cross-references could be helpful for enacting States in gaining a full</p>

		<p>understanding of the MLF and where the model law draws from. This is to be included as a short explanation in intro and more completely as a UNIDROIT Document sperate to the GtE referenced in intro.]</p> <p>12. (1) It was further noted that the desire of ensuring the MLF was interpreted consistently around the world could be explored in the Guide to Enactment, although it would be challenging to do so if Article 5 was removed and the format of the Guide to Enactment was an article-by-article commentary. (2) Several experts suggested that Article 5 should be deleted... Instead, it was suggested that the Guide to Enactment could explain that international concepts included in the model law should be properly incorporated into the domestic implementing law. (3) It was proposed that Article 5, paragraph 2 should be deleted altogether, while other experts were in favor of materially retaining Article 5, perhaps by moving it to the guide to enactment. The Working Group agreed to delete draft Article 5, paragraph 2 as well as “good faith” from paragraph 1, and to move the reference to the international origin and the need to promote uniformity to the preamble. (4) Article 5 of the draft MLF could be read to give the debtor the right to refuse payment to anyone but the assignor. Another expert clarified that regulations regarding the effectiveness of anti-assignment clauses in the new law would override Article 5, a view with which a majority of the Working Group agreed and to be made clear in the guide to enactment. ((1) Report Session 3, Para. 181. (2) Report Session 3, Para. 178. (3) Report Session 4, Para. 105. (4) Report Session 4, Para. 73)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as with Art. 5 (International Origin and General Principles) being removed in the final version the inclusion of the Article’s language in the GtE would be useful guidance to enacting States. (“(1) In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith. (2) Questions concerning matters governed by this Law that are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.”)]</p> <p>Note that this section could also be included in Part III.</p>
PART II – IMPLEMENTATION OF THE MODEL LAW ON FACTORING		
1.	Implementation of the Model Law on Factoring within the existing legal framework	<ul style="list-style-type: none"> a. States which have undertaken modern secured transactions reforms 6. States which have undertaken limited secured transactions reforms 7. States that have not undertaken secured transactions reforms 8. Standalone law or within a broader code

	<p>9. Implementational Issues (guidance on sensitive cases, e.g. where States have implemented factoring laws that significantly deviate from the MLF approach, such as factoring registries that only apply to the outright transfer of receivables).</p> <p>This section explains how the MLF will fit within the implementing states existing Secure Transactions laws, with guidance on avoiding setting up separate registries etc.</p> <p>(Referral items: 3, 35, 36, 37, 40)</p> <p>3. A Working Group Member noted that there would be necessary interfaces between the MLF and the State’s secured transactions law and that the MLF could not solve every possible overlap issue. He suggested that the commentary should identify such overlaps and provide guidance to legislators about how such overlaps could be resolved. (Report Session 1, Para. 217)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as this kind of guidance seems like it would be helpful to legislators as they go about the work of implementing the MLF.]</p> <p>35. Keeping the scope of the MLF broad while allowing countries to understand the policy objectives should be dealt with by additional implementation documents to the MLF which would explain to countries how they could adapt the MLF with their existing laws. (Report Session 2, Para. 42)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as it concerns implementation of the MLF and how it interacts with existing law which would seem to be useful guidance for enacting States.]</p> <p>36. A Working Group Member agreed with the need to provide guidance on registries based on the level of development of secured transactions laws in a particular jurisdiction. Additional guidance could be given on this matter in the Commentary. (Report Session 2, Para. 89)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as additional guidance on registries could be quite helpful to enacting States without a high level of development of secured transactions. This section could consist of mainly cross-references to other documents about registries based on the level of development of secured transactions laws in a particular jurisdiction.]</p> <p>37. A Working Group Member suggested that the Guide to Enactment should discourage States from considering registries based on the registration of individual invoices, as such systems had created problems in Latin America. (Report Session 3, Para. 30)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as this kind of guidance seems like it would be quite important to enacting States as they go about implementing the MLF.]</p>
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2.	Implementation of the Model Law on Factoring in different legal systems	<p>Additional explanation on special considerations that might need to be taken into account when the MLF is implemented in States with common law, civil law and sharia/Islamic traditions.</p> <p>(Referral item: 4)</p> <p>4. A Working Group Member suggested that it would not be possible to develop a MLF that was compliant with Sharia law, however it might be worth addressing in the commentary how the instrument could be adapted to accommodate Sharia law. (Report Session 1, Para. 237)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as this kind of guidance could be helpful in supporting adoption of the MLF.]</p>
PART III – COORDINATION OF THE MODEL LAW ON FACTORING WITH GENERAL LAW, REGULATION AND OTHER MATTERS		

1.	Coordination of the MLF with domestic law	<p>How the MLF fits with both the general private law of the implementing State (e.g. contract law), as well as the broader general law.</p> <p>Explain that the MLF supplements/modifies the general private law with more specific rules for the types of transactions within the scope of the MLF, but that the general law continues to apply to the transactions outside the scope of the MLF.²</p> <p>Explain interaction with general law rules that simply interacts with the MLF and that the MLF does not purport to change (consumer protection, insolvency law, negotiable instruments) and other general law rules on which the MLF is deliberately silent (writing requirements, electronic signatures etc).</p> <p>(Referral items: 5, 10, 15, 17, 30, 32, 45, 80, 88)</p> <p>5. Regarding expeditious proceedings and remedies, a Working Group Member recommended that the Commentary include guidance for States to provide for expeditious judicial enforcement and remedies for secured transactions in general, as this would incentivize the growth of the factoring industry. (Report Session 2, Para. 166)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of guidance could be useful to enacting States as they seek the best way to implement and support the MLF.]</p> <p>10. The Working Group agreed that there was no need for additional insolvency rules in the MLF, although the Guide to Enactment should explain that implementing States should ensure that domestic insolvency laws were well coordinated with factoring laws. The Working Group further agreed that the Guide to Enactment should adopt the position in the UNCITRAL Insolvency Legislative Guide that secured interests should have priority in insolvency unless there was strong justification for them not to. (Report Session 3, Para. 80)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as guidance on coordination between domestic insolvency laws and factoring laws would seem to be important for enacting States to consider.]</p> <p>15. The Working Group further agreed that the Guide to Enactment should provide guidance to States in relation to how a new factoring law should intersect with the use of negotiable instruments. The Guide to Enactment should encourage implementing States to transition to modern factoring practices, without precluding the continued use of negotiable instruments. (Report Session 3, Para. 10)</p>
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² Also illustrate how the MLF debtor discharge rules and rights and obligations of parties rules relate to equivalent rules in the general private law for transactions outside the scope of the MLF.

[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of overall guidance would seem helpful to enacting States as they figure out how the MLF fits into existing statutes and possible future statutes.]

17. ...should the MLF apply to assignments by consumers, it might be necessary for the instrument or commentary to suggest that States would need to clarify in their implementing legislation what types of receivables could not be assigned, for example contract dispute settlements or wage claims. (2) The UNIDROIT Secretariat noted that this topic might benefit from additional commentary to provide clarity on the issue, instead of trying to craft a black letter rule. ((1) Report Session 1, Para. 101. (2) Report Session 1, Para. 117)

[Secretariat's Observations: We think this suggestion should be included in the GtE as such a clarification would seem to be relevant to the enacting States. Also in the majority cases the consumer is the debtor but the consumer could also be an assignee or assignor therefore it would be useful to give some limited guidance on this.]

30. It was queried whether the definition of "receivable" resolved the issue that some factors faced where a receivable could not be transferred due to data protection or privacy issues. The chair noted that the Guide to Enactment should further explain that these matters could not be resolved in the MLF and would be regulated by the enacting State's broader legal framework. (Report Session 6, Para. 180)

[Secretariat's Observations: We think this suggestion should be included in the GtE as it concerns the enacting State's broader legal framework.]

32. The Working Group adopted the definition of "writing" and agreed that further guidance should be provided in the Guide to Enactment. (Report Session 3, Para. 171)

[Secretariat's Observations: We think this suggestion should be included in the GtE as the definition of "writing" has been removed from the MLF therefore further guidance could be useful to enacting States.]

45. A Working Group Member noted that the MLF commentary should clarify that the rules governing the relationship between assignor and assignee and account debtor in the MLF should diverge from the normal assignment rules in the enacting State, otherwise the MLF would create characterization issues for that State. (2) The Working Group had previously decided to include consumers as assignors, debtors and assignees. While agreement was expressed that consumers could be assignees on peer-to-peer platforms, uncertainty was raised as to whether consumers would also be assignors. Doubts were also raised on the practical relevance of cases in which a person acted as a consumer while assigning, based on the observation that consumers never acted as assignors, and only in very rare cases as assignees. When acting as transferors, it was maintained that private actors were essentially acting as businesses, not as consumers. The Working Group did not reach a conclusion on this point. ((1) Report Session 1, Para. 64. (2) Report Session 4, Para. 51)

[Secretariat's Observations: We think this suggestion should be included in a sentence or two in the GtE as it could be useful guidance to enacting States about some characterization issues that might arise.]

		<p>80. It was argued that the provision would not apply well in the case of a letter of credit or an independent guarantee. The first sentence [Article 7(1) of the MLF] would not apply because a transferee would not acquire the ultimate benefit of a letter of credit automatically, as their transfer would require the consent of the issuer. The second sentence [Article 7(1) of the MLF] should not work in practice either because letters of credit were, for the most part, not governed by (domestic) law. There was general support for the need to redraft the paragraph, and it was suggested that the enactment guide provide further explanation, specifying that the provision was optional and could be left out by enacting States. A proposal was made to remove the word “or supports” from paragraph q [Article 7(1) of the MLF], and to replace it with “guarantees”. It was contended that the deletion of “supports” would suffice because the term “secure” already included the concept of “guarantee”. It was then suggested to re-draft the provision in a way that worked for most jurisdictions and include an explanation of what the chosen wording was aiming to do in the guide to enactment, leaving it to the adopting States to find a wording that was suitable for their particular jurisdiction. The Working Group agreed that the aim was to not contradict the adopting States’ letter of credit law; this should be done by explaining this goal in the body of the MLF and/or the guide to enactment. The exact wording should be left to the next round of drafting. (Report Session 4, Para. 96)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as it does not appear to have already been addressed in the MLF and it seems like it could be useful guidance to enacting States that the aim of the MLF is to not contradict their letter of credit law.]</p> <p>88. It was suggested that the Article 14 [of the MLF] didn’t sufficiently clarify that a transferee would not lose its rights to the proceeds of receivables paid into a bank account upon the insolvency of the transferor. The Chair further suggested that the matter should be addressed in the Guide to Enactment and did not need to be addressed in the instrument itself. (Report Session 6, Para. 52)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as Art. 14 (Proceeds) has not changed in the final version of the MLF and there should be a cross-reference to this section from the Coordination with Domestic Law and Instruments (insolvency) section.]</p>
3.	The Model Law on Factoring and the digital economy	<p>a. Platforms</p> <p>b. Digital currency (‘digital money’)</p> <p>(Referral items: 24, 25)</p>

		<p>24. The Working Group agreed that the use of the term “money” in the Model Law should be broad enough to encompass future developments in the field of digital currencies and that the Guide to Enactment should provide further guidance on the issue. (Report Session 3, Para. 67)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as further guidance on the meaning of “money” could be useful to enacting States.]</p> <p>25. One expert queried whether the concept of “money” in draft Article 2, paragraph 4 [Article 2(1)(f) of the MLF] would include digital currencies or other non-fiat currencies. The other expert drew the Working Groups attention that the stand-alone definition of “money” in the MLF might not stand the test of time and might be incompatible with adopting States’ domestic laws regarding money. Another expert proposed not to use the notion of “money” in the MLF and instead solely refer to “means of contractual rights to payment”. Another expert pointed out that the notion of “money” might be necessary to exclude other obligations to deliver, such as payment by commodity or by performance. Acknowledging this difficulty, another expert proposed to consider using the term “funds” instead. Another expert pointed to the fact that under civil law jurisdictions, “payment” included performance, e.g. under a construction contract. The expert argued that “funds” was also a laden term with similar difficulties as “money”, and that therefore did not provide a solution to the problem at hand. The expert therefore argued in favor of retaining the term “money”. The Working Group decided to leave the task of adopting a precise definition of “money”, especially with regard to digital currencies, to each implementing State, and to leave the details of the contents of the description of “money” to the enactment guide for a later stage of the drafting process, and to retain the wording “sum of money” in Article 2 [Article 2(1)(f) of the MLF]. (Report Session 4, Para. 36)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as what “money” means in the context of the MLF would seem to be quite relevant to enacting States and therefore further guidance should be given by the GtE. There should also be a cross reference to this section from Art. 2.]</p> <p>c. Domestic electronic commerce laws</p> <p>d. Digital assets and private law – explain that receivables can be linked to digital assets (tokenisation), explain link with the UNIDROIT Principles on Digital Assets and Private Law.</p>
4.	The Model Law on Factoring and Regulatory Matters	<p>a. Banks</p> <p>b. Monetary authorities</p> <p>c. Banking and financial licensing laws</p>

		<p>(Referral item:11)</p> <p>11. The Working Group noted that issues related to regulatory rules would be explored in the Guide to Enactment. (Report Session 3, Para. 91)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as while the MLF is not a regulatory model law its implementation by a State without a complementary regulatory regime may mute its effect on growth of the factoring industry in that State.]</p>
5	Other Matters	<p>Guidance on other aspects relevant to factoring that may be relevant to implanting States, such as value added tax, credit insurance, currency controls, etc. This section would not provide policy guidance on how these matters should be dealt with, just some basic information on how they may relate to or be effected by the implementation of the MLF.</p> <p>(Referral item: 6)</p> <p>6. A Working Group Member recommended that fake transactions and documents could be addressed in the MLF. It was noted by the Working Group that these issues were likely addressed in misrepresentation and fraud legislation at a domestic level. However, consideration may be given to this matter in the Commentary. (Report Session 2, Para. 229)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as how the MLF is supported by an enacting State's existing domestic fraud and misrepresentation legislation would seem like helpful guidance.]</p>
PART IV – ARTICLE-BY-ARTICLE GUIDE		
1.	General instructions on reading the MLF	<p>Terminology (no need to adopt exact terminology in MLF, can adapt to equivalent domestic law terms)</p> <p>Explanation of bracketed text</p> <p>(Referral item: 13)</p> <p>13. It was suggested that the Guide to Enactment could provide alternative titles and allow for enacting States to choose their preferred title, or that the instrument itself could include a bracketed additional title or a footnote explaining the issue, since enacting States were likely to use their own titles in adopting the instrument through implementing legislation, and it would not be possible to identify a perfect title for the instrument due to the legal, promotional and marketing matters. The Working Group decided that the Guide to Enactment should provide at least one alternative title for the Model Law on Factoring that reflected its broader scope. (2) A Working Group Member suggested that either term [of transfer or assignment] could be used and that the Guide to Enactment could explain that an implementing State could choose either term in their domestic legislation. ((1) Report Session 6, Para. 6, 7. (2) Report Session 3, Para. 149)</p>

		<p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as the concepts of factoring/receivables can be represented by different words depending on the State therefore more naming options could be helpful.]</p> <p>(This has been moved from Part II section I)</p>
<p>Chapter I – Scope and General Provisions</p>		<p>(Referral items: 20, 26, 27, 29, 46, 47, 51, 52, 56, 59, 61, 62, 65, 66, 67, 68)</p> <p>20. The Working Group decided to retain Article 1(2). The Working Group decided that the Guide to Enactment should explain that the application of Article 1(4) [Article 1(2) of the MLF] was limited to laws specifically related to consumer protection. (Report Session 3, Para. 118)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as how Art. 1(2) in the final version of the MLF relates to consumer protection laws would appear to be useful for the enacting States to consider when implementing the MLF. The Art. 1(2) from session 3 was based on the old scope which was broader and was replaced by the final version by Art 1(4) from session 3. (Session 3 Art. 1(2): “Despite paragraph 1 [Article 1(1) of the MLF] (This Law applies to [transfers] of receivables.), this Law does not apply to: (a) [a transfer of a receivable as part of the sale or change in ownership status of the business out of which the assigned receivable arose]; or (b) [a transfer of a receivable for collection].”)]</p> <p>26. Some Working Group Members were concerned about the limitations that the Article 2 paragraph 4 (i) and (ii) [[Article 2(1)(j)] of the MLF] had, as they covered a part of what might be called “trade receivables” in the context of MLST, but left out other things such as insurance premiums. The Chair explained that the participants of the intersessional meeting on scope had reached this result in discussing the notion of “trade receivables”, which remained open for additions and suggestions from the Working Group. (Report Session 4, Para. 37)</p> <p>[Secretariat’s Observations: We think this suggestion should not be included in the GtE as it does not appear to come to a conclusion about what is being proposed to be included in the GtE. But guidance on issues relating to issuance premiums could be useful to enacting States.]</p> <p>27. Expressions in favor of specifying whether financial services and loans should be included in the body of the Model Law itself, rather than in the guide to enactment received some support, as did the notion that the phrase “supply of services” could be read to already include insurance services as well as loans. Solutions to offer some clarification, either in the body of the Model Law or the guide to enactment were proposed, such as to add “..., including...” and then to list those types of services that should, as a matter of policy, be included. The latter wording “including financial services” received some support as it would still leave countries a sufficient amount of flexibility when adopting the MLF to include different types of trade receivables. However, this proposed addition would likely make Article 2, paragraph 4 (iii) [Article 2(1)(g)(I) of the MLF] regarding credit card receivables superfluous. The Chair summarized the discussion so far, and noted that the views put forward up to this point suggested that “..., including financial services” should be added to Article 2 paragraph 4 (i)... (Report Session 4, Para. 40 and Para. 41)</p>

	<p>[Secretariat's Observations: We think this suggestion should be included in the GtE as further explanation of what is included in "supply of services" could be useful to enacting States in helping to remove any vagueness from the MLF.]</p> <p>29. It was suggested that the Guide to Enactment should provide some limitations on what should be considered "data", given that the MLF didn't attempt to define "data". It was also suggested that the Guide to Enactment would need to provide clear guidance on how "the provision or processing of data" related to both financial receivables and digital assets to ensure that the proposed additional language did not unduly expand the scope of the MLF to transactions that the Working Group did not intend to cover. (Report Session 6, Para. 179)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as clear guidance on "data" would help make sure the MLF when enacted stays within the scope the Working Group intended. There should be a reference back to this section from the section over Art. 2(g) [Article 2(1)(g)(iii) of the MLF] where "data" is included in the definition of "receivable."]</p> <p>46. It was suggested that the Guide to Enactment could explain the difficulties that would arise in relation to receivables arising from real property contracts. (Report Session 3, Para. 17)</p> <p>[Secretariat's Observations: This suggestion should be included in the GtE with a brief reference to immovable property contracts and why they are not a part of the MLF along with guidance on grey areas like hotel services and long term leasing of apartments.]</p> <p>47. The Working Group noted that the commentary to the MLF should provide further guidance to States . . . Address[ing] recharacterization issues. (Report Session 1, Para. 185)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as further guidance on recharacterization issues could be useful in helping enacting states gain a more complete understanding of the MLF. This suggestion about the recharacterization issue should be included in the section for the Art. 2(g) as it deals with the definition of a receivable.]</p> <p>51. The Working Group decided that in order to maintain consistency with the MLST, the definition of "debtor" should not be changed in relation to future receivables, and that the Guide to Enactment should provide further explanation on the issue. (Report Session 3, Para. 122)</p> <p>[Secretariat's Observations: We think this suggestion should be included as one sentence under the Art. 2(B) [Article 2(1)(b) of the MLF] section in the GtE as further guidance on the meaning of "debtor" could be useful for enacting states to consider.]</p> <p>52. A Working Group Member suggested that the Guide to Enactment explanation on the definition of "transfer" might be more important than the definition itself. It was suggested that it might be preferable to have a broad definition in the instrument and let the Guide to Enactment explain that the definition included different types of security interests, such as fixed charges and floating charges. Another Working Group Member agreed that the Guide to Enactment could explain to implementing States that the MLF should apply to security interests over receivables to the extent that such security</p>
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	<p>interests existed under the domestic law (for example, if the domestic law provided for pledges, then the MLF as implemented by that State would apply to pledges over receivables). (Report Session 3, Para. 156)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the Art. 2(i) [Article 2(1)(j) of the MLF] section of the GtE as it appears to be quite important guidance to the enacting States about how to integrate the MLF with their own domestic law when adopting the MLF.]</p> <p>56. The Chair asked the Working Group whether there was consensus on the need to redraft Article 2, paragraph 4(ii) [Article 2(g)(ii) of the MLF] on the part concerning intellectual property. Support was expressed for the need, at the very least, for more explanatory language. (Report Session 4, Para. 48)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE because with the simplification of Art. 2(g)(ii) to just "the assignment or licence of intellectual property" some more explanatory language could be valuable to the enacting States as intellectual property is left undefined in the MLF.]</p> <p>59. The decision was made that financial services should include an explanation, either in footnote, in MLF text or in the guide to enactment. It should explain the types of services that should not be included by “supply of services” in Article 2, paragraph 4 of the MLF [Article 2(g)(I) of the MLF], especially with regard to the exclusion of financial services, such as loans. (Report Session 4, Para. 61)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE because further explanation of "supply of services" in Art. 2(g) would seem to be useful guidance for enacting States.]</p> <p>61. It was noted that the draft MLF ought to not give the impression that guarantors had different rights under the MLF than under the applicable guarantee law. On a related note, it was stressed that the role of the guarantor should be clarified in the draft MLF. The Chair tentatively summarized that the prevailing stance was to not include “guarantor” in the definition of “debtor”, however leaving the issue open and to be revisited at a later stage. (2) It was suggested that the bracketed language in Article 2 of the draft MLF should be deleted for the reason that (i) it was not possible to know how the domestic law in each implementing State would treat guarantors, (ii) the MLF should not curtail any domestic law rules that protected guarantors in enacting States, (iii) it was not advisable to apply all of the debtor rules to guarantors; and (iv) nor was it advisable to introduce a number of specific rules for guarantors throughout the MLF which would add significant complexity. The Working Group decided to delete the bracketed language and agreed that comprehensive guidance should be given to implementing States in the Guide to Enactment regarding the treatment of debtors under the MLF and the applicable domestic law regulating guarantors and secondary obligors. (Report Session 4, Para. 88)</p> <p>[Secretariat’s Observations: (1) We think this suggestion should be included in the GtE section over Art. 2(b) as although the MLF makes no mention of "guarantor" a guarantor might have to fill the shoes of a debtor therefore this guidance could be useful to enacting States. (2) We think this suggestion should be included in the GtE because such guidance is necessary</p>
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given the deleted language. (Session 5 Art. 2(1): "Debtor" means a person who owes payment of the receivable [including a guarantor or other person secondarily liable for payment of the receivable].)

62. It was suggested that the definition of 'receivable' in Article 2(1) of the draft MLF [Article 2(g)(ii) of the MLF] should use 'intellectual property' as an umbrella term for copyright, trademarks geographical indications, industrial designs, patents, topographies of integrated circuits and trade secrets', which can avoid a narrow scope of MLF and was aligned with the phrase adopted by UNCITRAL instruments and the World Intellectual Property Organization (WIPO). It was also suggested that the Guide to Enactment can include the above explanation. (Report Session 5, Para. 28)

[Secretariat's Observations: We think this suggestion should be included in the GtE as the final version of the MLF only includes "intellectual property" in Art. 2(g) without further explanation therefore further guidance in the GtE could be useful to enacting States.]

65. It was stated that the problem of inconsistency may occur if Article 1 discusses whether MLF can apply to negotiable instruments while the definition of "proceeds" in Article 2(1)(f) included money, negotiable instruments and funds credited to a deposit account with an authorized deposit-taking institution. The Working Group decided to (i) remove Article 1(4), (ii) further consider whether negotiable instruments should be excluded from the definition of "receivable", and (iii) further explain the issue in the Guide to Enactment. (Report Session 6, Para. 10)

[Secretariat's Observations: We think this suggestion should be included in the GtE as a further explanation around "negotiable instruments" being excluded from being a "receivable" (Art. 2(g)) could be helpful to enacting States in adding clarity to the definition of "receivable" in relation to the inclusion of "negotiable instruments in the Definition of "proceeds" in Art. 2(f).]

66. It was queried what the relationship was between data-related receivables and other sub-paragraphs in Article 2(1)(f) [Article 2(1)(g) of the MLF], given that there was overlap between the supply of services and the provision or processing of data, and in certain circumstances there could also be overlap between the assignment or license of intellectual property and the provision or processing of data. To clarify that the four categories giving rise to receivables overlapped and were not mutually exclusive, the Working Group agreed to add "arising from one or more of the following" to the chapeau of Article 2(1)(f) [Article 2(1)(g) of the MLF], and to provide extensive guidance on the matter in the Guide to Enactment. (Report Session 6, Para. 176)

[Secretariat's Observations: We think this suggestion is quite important and should be included in the GtE as how these four categories can overlap would seem to be useful guidance for enacting States so that they can have a full understanding of the scope of these categories.]

67. It was noted that a yet unknown debtor could not be notified. It was suggested that the guide to enactment should explain that the notion of "debtor" also included a potential debtor. One expert suggested that the issue of notification when the debtor did not exist yet could be addressed by adding "..., in which case the debtor refers to the person who will be the debtor" to Chapter I, Article 6, paragraph 2 of the draft MLF. Another expert responded that this won't be necessary and

		<p>might be better dealt with in the guide to enactment. It was suggested to include some sample language in the enactment guide for those jurisdictions that might consider the notion of “debtor” to be ill-defined. The Working Group agreed that the term “debtor” should remain as drafted in the Model Law itself but should be explained in the guide to enactment, including some sample text for jurisdictions that conceptualized “debtor” in a more literal way. (Report Session 4, Para. 87)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as the issue of notification when the debtor does not exist yet does not appear to have been dealt with in the final version of the MLF therefore including this suggestion in the GtE could be helpful to enacting States. There should be a cross-reference to this section from the Article-by-Article Commentary for Art. 25 (Notification of a transfer or payment instruction). Also this guidance should consider the possible situation where the debtor is truly unknown.]</p> <p>68. A Working Group Member added that the Working Group had agreed to give further consideration to the good faith principle, different modes and mechanisms or issuing notification, as well as the content of a notification, all of which could potentially be addressed in the Commentary. (Report Session 2, Para. 116)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as further guidance on "good faith" and "notification" could be useful to enacting States as they implement the MLF.]</p>
	<p>Chapter II – Transfer of a Receivable</p>	<p>Will be prepared by the Secretariat as a model section for the article-by-article part, for consideration by the WG at its first session April.</p> <p>(Referral items: 33, 34, 70, 72, 73, 76, 77, 78, 79, 82, 83)</p> <p>33. A Working Group Member noted that different types of transactions had different regulatory elements to be addressed, depending upon their treatment in different jurisdictions. This could be elaborated further in the Commentary to the MLF. The Chair noted that certain assignments related to regulated activities and needed to be excluded from the scope of the anti-assignment clause. This was so that the MLF’s anti-assignment clause did not violate any government or regulatory policies. The list or extent of such activities needed additional consideration. (Report Session 2, Para. 37)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as it appears unaddressed by Art. 8 (Contractual Limitations on the Transfer of a Receivable) in the final version of the MLF and would be useful guidance to enacting States so that the MLF is in harmony with the domestic law. There should also be a cross reference to this section from the section over Art. 8.]</p> <p>34. A Working Group Member noted that one of the differences between the approach of the Receivables Convention and the UNCITRAL Model Law was that it indicated a list of types of transactions to be excluded, and what a State would be expected to do in this regard. He added that in the MLF it would be better to offer general guidance on the issue of where anti-assignment clauses could be overridden. Additional guidance could then be provided in implementational documents. Another Working Group Member agreed with this proposition, noting that flexibility was important in this regard, and that</p>

	<p>guidance should be offered in this regard in the additional implementation documents to the MLF. The Chair also agreed with the importance of flexibility in this regard. (Report Session 2, Para. 38)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of guidance could be useful for enacting States.]</p> <p>70. The Working Group agreed that the commentary to the MLF should provide further guidance to enacting States on the treatment of formalities. (Report Session 1, Para. 194)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as given that the requirements of the formalities of transfer are different between States, the main body of MLF left open this issue, and the GtE should give some further instructions on the treatment of formalities. It will contribute to standardizing the treatment of formalities in the enacting States.]</p> <p>72. It was queried what was meant by the transferor having 'the power to transfer' the receivable, noting that it could be possible for a transferor to have the right to a receivable but not have the power to transfer it. The Working Group decided to retain 'the power to transfer' language in Article 6(1) [Article 5 of the MLF], and explain the matter further in the Guide to Enactment. (2) It was stated that the current drafting of Article 5(2) [Article 5(1) of the MLF] presumed that rights in a receivable were rights that allowed the transferor to transfer that receivable, while the pledgors did not always have the right to transfer the receivable subject to the pledge. The Working Group may wish to consider whether the right of the transferor should include the right to transfer. The Working Group decided that this point should be addressed in the Guide to Enactment. ((1) Report Session 5, Para. 93. (2) Report Session 6, Para. 34)</p> <p>[Secretariat's Observations: We think this suggestion should not be included in the GtE as the language of Art. 5 (Requirements for the Transfer of a Receivable) in the final version of the MLF makes it clear through the "or" that it is possible for the transferor to have rights in the receivable but not have the power to transfer it therefore it would be redundant to include this suggestion in the GtE. The inclusion of a practical example into the guidance in the GtE could also be useful.]</p> <p>73. It was suggested that the existing drafting of Article 5(3) might not allow a transferor to transfer (i) all of its receivables within a generic category of receivables, and (ii) all of its receivables, other than a specific type of receivable. Noting that such transfers were permitted under most modern domestic secured transactions laws, it was queried whether Article 5(3) should be amended or whether the matter could be dealt with in the Guide to Enactment. (Report Session 6, Para. 36)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as Art. 5(3) (Requirements for the Transfer of a Receivable) is unamended in the final version of the MLF therefore dealing with this issue raised in the GtE could be helpful to enacting States. This guidance should also clarify that both are allowed.]</p> <p>76. It was queried whether the MLF or GtE needed to address tracing and commingling issues to clarify that the principles of tracing reflected in other laws should be applied to the MLF under Article 6. The Chair suggested that there was no need</p>
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	<p>to address the matter in the MLF, and noted that any explanation included in the Guide to Enactment would have to be carefully drafted, as there was no internationally accepted theory of tracing. (Report Session 6, Para. 54)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as a reference under the section on Art. 6 (Proceeds) as this guidance could be useful to enacting States.]</p> <p>77. It was questioned whether draft Chapter II, Article 9 needed a provision parallel to Article 8, paragraph 2. A suggestion was made to reverse the order of Articles 8 and 9. According to Article 9, it was noted that the enactment guide should provide a detailed explanation of the language used and its goals. The Working Group agreed to reverse the order of draft Articles 8 and 9. (Report Session 4, Para. 97)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as further explanation around Art. 7 (Personal or property rights securing or supporting payment of a receivable) and 8 (Contractual limitations on the transfer of receivables) in the final version (Art. 9 and 8 in the Session version) could be useful to enacting States as these Articles remain unchanged in the final version of the MLF.]</p> <p>78. It was queried whether in the situation where a factor and client agreed to an AAC that deviated from the AAC override in the MLF, whether the AAC would be invalidated if the factor then transferred the receivable to another factor in violation of the AAC. The Chair suggested that the issue could be explored in the Guide to Enactment. (Report Session 3, Para. 173)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this kind of issue around anti-assignment clauses could be useful to enacting States in getting a full understanding of the effect of the MLF.]</p> <p>79. The Working Group agreed that the Guide to Enactment should encourage implementing States to only provide for statutory restrictions on assignments in limited circumstances for important public policy reasons. ... The Working Group decided that the MLF should stay silent on statutory restrictions on assignments and that the matter should instead be addressed in the Guide to Enactment. (Report Session 3, Para. 23)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE because Article 8 (Contractual Limitations on the Transfer of a Receivable) gives a clear opinion of the anti-assignment agreements between contract parties, it should also discuss the effect of States' statutory restrictions. This section should also be cross referenced in the section over Art. 1(3) (Scope of Application).]</p> <p>82. It was suggested that under the current drafting, it might still be possible for a guarantor to be sued by the debtor for the breach of an anti-assignment clause. If the intention of Article 8(2) was to protect any third party from tortious liability vis-à-vis the debtor for inducing a party to breach an anti-assignment clause, the Working Group might wish to consider expanding the scope of the override of anti-assignment clauses in Article 8(2). (Report Session 6, Para. 41)</p>
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		<p>[Secretariat's Observations: We think this suggestion should be included in the GtE as Art. 8 (Contractual Limitations on the Transfer of a Receivable) remains unchanged in the final version of the MLF therefore this issue may still be present and addressing it in the GtE could be helpful to enacting States so that this liability does not differ from its intended scope.]</p> <p>83. It was suggested that the Guide to Enactment should clarify that where a State enacted the MLF, the complete anti-assignment clause override in Article 8 would be effective, even if Article 37(2)(b) [Article 36(2)(b) of the MLF] might imply that Article 8 was not applicable. (Report Session 6, Para. 106)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as giving further guidance on possible internal conflicts in the MLF is useful guidance for enacting States.]</p>
	<p>Chapter III – Effectiveness against third parties of a transfer of a receivable</p>	<p>(Referral items: 75, 84, 86)</p> <p>75. The Working Group decided that the Guide to Enactment should clarify that the effectiveness of the transfer of a receivable against third parties also requires the transfer to be effective between the parties under Article 5. (Report Session 6, Para. 43)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as this clarification could be helpful to enacting States.]</p> <p>84. It was suggested that the Guide to Enactment should provide that the debtor should not be considered as a "third party" for the purposes of the chapter III, since the transfer of a receivable would be effective against a debtor once the debtor had been notified, regardless of whether a notice relating to the transfer had been registered. (Report Session 6, Para. 182)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as whether the debtor is a third-party in Chapter III (Effectiveness Against Third Parties of a Transfer of a Receivable) seems to be materially important to a correct understanding of the MLF]</p> <p>86. It was suggested that Articles 9, 10 and 14 appeared to secure the priority in all proceeds, based on order of registration of the notice regarding the transfer of the underlying receivable, which might be misleading since the priority in relation to certain types of proceeds (such as possession of money or control of a bank account) would be determined by the enacting State's broader legal framework, which could lead to different priority outcomes. This matter should be addressed either in the MLF or the GtE. (Report Session 6, Para. 44)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as there has been no change in Art. 9 (Registration), 10 (Proceeds) and 14 (Proceeds) in the final version of the MLF therefore addressing this issue in the GtE could be useful guidance to enacting States.]</p>
	<p>Chapter IV – The Registry System</p>	

Chapter V – Priority of a Transfer	<p>(Referral items: 89, 90, 91)</p> <p>89. It was suggested that the phrase used in the MLST ‘the insolvency law to be specified by the enacting State’ would be likely to result in the enacting State specifying their own insolvency law, even though the enacting State’s insolvency law might not be the applicable insolvency law under the relevant conflict of law rules. The Working Group agreed to replace ‘the insolvency law to be specified by the enacting State’ in Article 35 with ‘the applicable insolvency law’, and to explain the matter in the Guide to Enactment. (Report Session 5, Para. 16)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as it seems like it would be helpful for enacting States to be more informed of which insolvency law is meant to be applied by the MLF.]</p> <p>90. It was queried whether the MLF should provide the definition of “insolvency proceedings” and to cover different schemes of arrangements The Working Group decided to address the meaning of “insolvency proceedings” in the Guide to Enactment. (Report Session 6, Para. 55)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as addressing the meaning of “insolvency proceedings” could help enacting States better fit the MLF into their domestic legal framework.]</p> <p>91. Since the term “judgment creditor” was not well understood or commonly used in the legislation of most States, it was suggested that the MLF could include a definition of “judgement creditor” and the Guide to Enactment could explain that enacting States may wish to use a different term to “judgment creditor”. (Report Session 6, Para. 56)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as because of the infrequent use of “judgment creditor” providing a definition could help enacting States to know what already used term in their legal framework matches up with “judgement creditor” so the MLF may be more correctly implemented.]</p>
Chapter VI – Rights and Obligations of the Transferor, Transferee, and the Debtor	<p>(Referral items: 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114)</p> <p>93. With reference to paragraphs 52 – 53 of the Issues Paper [of the Third Working Group], the Chair asked the Working Group whether the Guide to Enactment should explain the consequences of a junior factor collecting receivables. A Working Group Member noted that Article 4(1)(c) of the draft MLF [Article 23(c) of the MLF] provided that where a junior transferee collected payment, the senior transferee had the right to claim the proceeds of the collection. It was suggested that while this was the correct result on a policy basis, the matter needed to be explained in the Guide to Enactment. (Report Session 3, Para. 69)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as even in the final version of the Article discussed in the suggestion, Art. 23(c), there remains the raised issue therefore further guidance could be useful. (Art. 23(c): “If a payment with respect to the receivable is made to another person over whom the transferee has priority the transferee is entitled to be paid that amount by the other person.”)]</p>

94. It was argued whether the debtor would be required to make a second payment under a conflict condition between Article 24 [Article 23 of the MLF] and Article 27 [Article 26 of the MLF]. The Working Group agreed that the Guide to Enactment should provide further guidance on the relationship between Article 24 [Article 23 of the MLF] (which provided right to payment rules vis-à-vis the transferor and transferee) and Article 27 [Article 26 of the MLF] (which provided the debtor discharge rules). (Report Session 6, Para. 74)

[Secretariat's Observations: We think this suggestion should be included in the GtE as an understanding of how these two Articles interact could be useful for enacting States as the debtor should never pay twice.]

95. It was argued that factors rarely would be in position to receive the returned goods and the phrase a transferee's "entitlement" to returned goods was difficult to understand in civil law systems. The Working Group agreed that the Guide to Enactment should provide further guidance on the relationship between Article 24 [Article 23 of the MLF] (which provided right to payment rules vis-à-vis the transferor and transferee) and Article 27 [Article 26 of the MLF] (which provided the debtor discharge rules). The Working Group agreed to explain in the Guide to Enactment the circumstances in which a transferee might have an interest in returned goods. (Report Session 6, Para. 76)

[Secretariat's Observations: We think this suggestion should be included in the GtE given the deletion of Art. 24(2) from the session 6 version of the MLF leaves enacting States with no guidance as to returned goods so without this explanation in the GtE enacting States would be left without any guidance as to the circumstances in which a transferee might have an interest in returned goods. (REF - Session 6 Art. 24(2): "In the case of a receivable that arose under a contract for the supply of goods, the transferee is entitled to any goods that may be returned in respect of the receivable.")]

97. One participant pointed out the different regulations that the acceptance of notifications has across jurisdictions. The Chair proposed addressing this at a later stage of the drafting process. It was noted that either the MLF or the guide to enactment would need to include a definition of "notification" and of "payment instruction". One expert suggested that Article 7, paragraph 7 [Article 2(b) of the MLF] should be moved up, as the "debtor" definition would solve some of the issues. (Report Session 4, Para. 83)

[Secretariat's Observations: We think this suggestion should be included in the GtE as "notification" and "payment instruction" remain undefined in the final version of the MLF therefore some guidance on these terms could be useful for the enacting States.]

98. It was queried what was the exact meaning of 'prior transfer' in Article 19 [Article 25 (4) of the MLF], which might cause confusion as 'prior transfer' was a defined term with a different meaning in Article 41(1) [Article 49(1)(b) of the MLF]. The Working Group agreed to change 'prior transfer' to 'previous transfer' in Article 19 [Article 25(4) of the MLF] and explain the exact meaning of 'previous transfer' in the Guide to Enactment. (Report Session 5, Para. 108)

[Secretariat's Observations: We think this suggestion should be included in the GtE as this issue carries through to the final version of the MLF.]

		<p>99. It was suggested that the Guide to Enactment should explain that Article 26(4) [Article 25(4) of the MLF] only applies to “series of transfers” situations under Article 27(5) [Article 26(5) of the MLF]. The Working Group agreed that the Guide to Enactment should explain the circumstances under which the rule would apply, with reference to “series of transfers” in Article 27(5) [Article 26(5) of the MLF]. (Report Session 6, Para. 79)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as understanding when Art. 25(4) (Notification of a Transfer or Payment Instruction) applies could be helpful guidance to enacting States. (Art. 25(4): “In the case of a series of transfers of a receivables from a transferee to a subsequent transferee, a notification of one transfer constitutes a notification of all previous transfers.”)]</p> <p>100. A Working Group Member noted that present day practices and formalities could be showcased in the Commentary. (Report Session 2, Para. 109)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as this kind of guidance could be useful for enacting States as they implement the MLF.]</p> <p>101. The Working Group agreed that the Guide to Enactment should include additional explanation on how debtor notification requirements would differ in relation to the two types of future receivables. (Report Session 3, Para. 54)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as an explanation about the difference between the notifications of future receivables arose out of an existing contract after its conclusion and those that arose out of a future contract could be useful to enacting States. There should be a cross reference to this section from the Article-by-Article Commentary over Art. 2(d) (Definition of Future Receivable).]</p> <p>102. The Chair suggested this matter [of discharge rules for debtors] could be mentioned in the Commentary. (Report Session 2, Para. 80)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as although it appears to have already been addressed by the inclusion of Art. 26 (Debtor’s Discharge by payment) in the final version of the MLF though further guidance on this Article could be useful to enacting States.]</p> <p>103. It was also agreed that the good faith principle in this regard [of debtor’s discharge by payment] would be mentioned in the Commentary. (Report Session 2, Para. 101)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as there is no mention of the good faith principle in Art. 26 (Debtor’s Discharge by Payment) so it could be worth including it in the GtE but should be specific about why and have an example about debtor discharge by good faith payment.]</p> <p>104. It was suggested that the last transferor should be the party to provide the notification, while all the other transferors had the right to do the same. Another suggested that for chains of transfers, the notification should include information about the first transferor. The Chair argued that is not necessary, however, it was argued that the receivable could not be</p>
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identified sufficiently without naming the original creditor. It was also suggested that the guide to enactment could provide additional explanation on notification requirements in complex chain of transfer situations. It was pointed out that the wording of Chapter VI, Article 7, paragraph 7 [Article 26(7) of the MLF] had been drafted for a scenario with a single transfer, not a chain of transfers, and suggested addressing this matter at a subsequent meeting. (Report Session 4, Para. 82)

[Secretariat's Observations: We think this suggestion should be included in the GtE as although the inclusion of "any intermediate transfer" in Art. 26(7) (Debtor Discharge by payment) would seem to make this suggestion no longer applicable examples of such situations could still be useful to include in the GtE.]

105. The Chair reiterated that the new Article 7 [Article 26 of the MLF] should put the different scenarios in a logical order of practical likelihood and relevance. The issue of how the debtor was to know whether it was a case of a chain of transfers or multiple transfers by the same transferor remained to be resolved. Paragraph 4 appeared to assume that the debtor knew the transferor, which contradicted the decision of the Working Group had taken the previous day (the notification did not have to name the transferor). Regarding paragraph 5, it assumed that the transferee had given the notification and that while the notification ought to identify the transferee, it was not clear that it also had to identify the person giving the notification. The MLF does not require the notification to specify the date of the transfer, making it difficult for the debtor to determine which was the last transfer in a chain of transfers. It was suggested that Article 7 might be broadened to accommodate the points raised, and that Articles 4 and 5 in practice would likely be provisions that would be relevant after a debtor had already paid rather than a guide to a debtor about whom to pay. It was noted that in developed factoring markets erroneous payments to one transferor got resolved between the factors, this approach is more difficult in developing factoring markets. A suggestion was made to solve the issue by focusing on what the notice contained rather than who issued it, a connection was also drawn with Article 6, paragraph 1 [Article 25(1) of the MLF], in which the requirements for an effective notification were set out. The Working Group agreed that the relevant articles should be redrafted and reconsidered at the next meeting. (Report Session 4, Para. 93)

[Secretariat's Observations: We think this suggestion should be included in the GtE as the issue of who issued the notice over what information the notice contains is still unsolved in the final version of the MLF.]

106. It was discussed whether the phrase regarding 'Adequate Proof' in the final sentence of Article 20(7) [Article 26(7) of the MLF] should be deleted or be dealt with in the Guide to Enactment. Since the sentence reflected Article 17(7) of the Receivables Convention and had been clarified in RC to make that adequate proof of a transfer could emanate from either the transferor or transferee and to ensure that adequate written proof emanating from the transferor would be deemed sufficient. The Working Group decided to retain the final sentence of Article 20(7) [Article 26(7) of the MLF]. (Report Session 5, Para. 43)

[Secretariat's Observations: We think this suggestion should be included in the GtE because it would probably help enacting States to have some guidance regarding the phrase "Adequate Proof" in Art. 26(7) (Debtor Discharge by payment).]

		<p>107. It was suggested that the Guide to Enactment should clarify that the phrase “by the transferee” in Article 27(5) [Article 26(5) of the MLF] referred to the transferee sending the notification to the debtor rather than the transferee making the transfer. (Report Session 6, Para. 82)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as the phrase "by a transferee" is a bit ambiguous as too if it refers to notification or the making of the transfer therefore some guidance on what the phrase is meant to be in inference to could be useful for enacting States.]</p> <p>108. It was suggested that the existing drafting did not provide sufficient differentiation between the rules in paragraphs 2 and 5 [Article 26(2) and 26(5) of the MLF], which intended to address the initial notification and subsequent transfers’ notification respectively. The Working Group agreed to amend the drafting and further explain the matter in the Guide to Enactment. (Report Session 6, Para. 83)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as there has been no further changes to these paragraphs in the final version of the MLF therefore this guidance could be helpful to enacting States.]</p> <p>110. A Working Group Member queried if Article 18(2) included notifications of future receivables. The Chair noted that the Working Group had agreed to a broader application of the MLF to receivables. As such, this would be no different. He acknowledged that the language in Article 18(2) of the Receivables Convention was ambiguous and could be clarified. He also added that explanatory text in this context could be included in the Commentary. (2) The Chair summarized that the Working Group agreed that a version of Article 18 of the Receivables Convention should appear in the MLF and that it would be applicable to future receivables. With regard to set-off, the ambiguity it exposed should be dealt in the Commentary. ((1) Report Session 2, Para. 120. (2) Report Session 2, Para. 122)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as Art. 27(2) (Defences and Rights of Set-Off of the Debtor) remains unchanged in the final version of the MLF therefore with this continued ambiguity some guidance in the GtE could be helpful to enacting States in getting a complete understanding of Art. 27(2) (Defences and Rights of Set-Off of the Debtor).]</p> <p>111. With regard to the substance of the agreement on waiver and defenses, a Working Group Member raised a query on how a party would agree to waive defenses, asking whether it had to specify what rights were being waived or if an abstract waiver of all rights under a provision similar to Article 18 of the Receivables Convention could be issued. She noted that in Japan, specific rights needed to be identified following a recent reform of the Civil Code. She suggested that this issue should be noted in the Commentary. The Chair agreed that this (matter of whether to specify the rights in the waiver) should be reflected in the Commentary. (Report Session 2, Para. 135)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as it is useful guidance for enacting States on how the waiver will interact with their domestic law. This section should be cross-referenced by the Coordination with Domestic Law and Instruments section due to the interaction with an enacting State's civil code.]</p>
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	Chapter VII – Collection and Enforcement	<p>(Referral items: 96, 115)</p> <p>96. It was also suggested that the decision to delete Article 24(3) and deviate from Article 59 of the MLST would need to be carefully explained in the Guide to Enactment. The Working Group decided to delete Article 24(3) from the MLF and to explain in the Guide to Enactment that Article 35 provided how transferors and transferees were to deal with a surplus. (Report Session 6, Para. 77)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as with the deletion of Art. 24(3) from the session 6 version of the MLF some guidance from the GtE could be useful for enacting States. (Session 6 Art. 24(3): "A transferee may not retain more than the value of its right in the receivable.")]</p>

		<p>115. It was suggested that the term used in Article 28(3) [Article 35(2) of the MLF] should be retained, instead be amended to ‘the transferor and any person who owes the obligation secured by the security transfer’ in Article 27 [Article 34 of the MLF]. The Guide to Enactment should clarify that the purpose was not to interfere with the law of guarantees in the enacting State and that the rule would only be necessary to include in the MLF if the law of guarantees did not achieve this result. the Working Group decided to retain the provisions subject to further amendments. (Report Session 5, Para. 72)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as it appears unanswered by the text of the final version of the MLF and therefore it could be useful to give guidance on this language to the enacting State.]</p>
	Chapter VIII – Conflict of Laws	<p>(Referral items: 44, 116)</p> <p>44. It was noted that the conflict of laws rule was necessary as it was possible that the conflict of laws rule in the enacting State itself could have changed over time. The Guide to Enactment could explain why the conflict of laws rule was necessary and explain that the practical result of the conflict of laws rule would be for the law of the forum to apply. (Report Session 6, Para. 132)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE because further explanation of the conflict of laws rule would seem to be useful for enacting States.]</p> <p>116. It was suggested that Article 46 [Article 45 of the MLF] or the Guide to Enactment should incorporate the substance of paragraph 500 of the MLST Guide to Enactment, which reflected recommendation 223 of the UNCITRAL Legislative Guide on Secured Transactions and recommendation 31 of the UNCITRAL Legislative Guide on Insolvency Law. The Working Group decided to include the substance of paragraph 500 of the MLST Guide to Enactment in the MLF Guide to Enactment. (Report Session 6, Para. 119)</p> <p>[Secretariat’s Observations: We think this suggestion should be included in the GtE as the guidance provided by paragraph 500 of the MLST GtE seems like it would be helpful in making sure enacting States have a complete understanding of Art. 45 (Effect of Insolvency Proceedings on the Law Applicable to a Transfer). (Ref - MLST GtE Para. 500: “Article 94 (Impact of commencement of insolvency proceedings on the law applicable to a security right) is based on recommendation 223 of the Secured Transactions Guide (see chap. X, paras. 80-82). It provides that an insolvency court in the enacting State must in principle respect the law applicable to security rights under its conflict-of-laws rules. However, nothing in article 94 restricts the application of the law of the State in which insolvency proceedings are commenced (<i>lex fori concursus</i>) to matters such as the avoidance of fraudulent or preferential transactions, the treatment of secured creditors, the ranking of claims and the distribution of proceeds (see rec. 31 of the Insolvency Guide).”)]</p>
	Chapter IX – Transition	<p>(Referral items: 117, 118, 119, 120)</p> <p>117. It was suggested that the drafting “law applicable under the conflict of laws rules of [the enacting State] immediately before entry into force of the new law” could confuse a reader into thinking that the listed articles were</p>

		<p>conflict of laws rules rather than the substantive provisions. The new provision could be refined, or the matter could be addressed in the Guide to Enactment. (Report Session 6, Para. 145)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as because the provision was not redefined the matter should be addressed in the GtE.]</p> <p>118. It was noted that the 'any step' language in paragraph 2 was vague in relation to exactly what was required from a party to do to enforce a prior transfer, and what constituted 'any step' would vary depending on the prior law in the enacting State. The Working Group decided to retain the phrase 'any step' in Article 43(2) [Article 50(2) of the MLF], and further decided that the Guide to Enactment should include additional analysis on the range of actions that might satisfy this provision in different context. (Report Session 5, Para. 33)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE because additional analysis of "any step" seems like it would be quite helpful in clearing up the vagueness in the phrase for the enacting State.]</p> <p>119. It was suggested that the issues whether a transition period should be introduced to allow for registration under the new system following the MLST approach and how long the transition period should be, might need to be addressed in the guide to enactment. The Chair of the subgroup invited the Working Group members to send in proposals for explanations that should be included in the guide to enactment on this point. The Working Group decided that the MLF should provide for a grace period similar to the MLST. (Report Session 4, Para. 69)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as the issue raised does not appear to be already addressed in the final version of the MLF therefore further guidance (e.g. providing for a grace period) could be useful to enacting States.]</p> <p>120. Question to whom the debtor's obligation was owed after a transfer that should not take place due to restrictions on assignments. The application of an expiry date on anti-assignment clauses made under the old law was discussed, to avoid them continuing for a long period of time in contradiction with the new law. On a related point, when adopting a rule on anti-assignment clauses on receivables, it was mentioned that the same would also apply to supporting rights, which should be made clear in the guide to enactment. (Report Session 4, Para. 73)</p> <p>[Secretariat's Observations: We think this suggestion should be included in the GtE as the issue raised with the anti-assignment clause and supporting rights does not appear to be addressed in the MLF.]</p>
	Annexe A – Registry Provisions	<p>(Referral numbers: 39)</p> <p>39. Other experts suggested that while these matters [of (i) the registry not performing substantive verification of information; (ii) the registration of notices as opposed to agreements or invoices; and (iii) the charging of reasonable fees.] were important, it might be preferable to discuss them in the Guide to Enactment. (Report Session 3, Para. 35)</p>

		[Secretariat's Observations: We think this suggestion should be included in the GtE as these topics are not discussed in the MLF but could still provide some useful guidance to enacting States with their inclusion into the GtE.]
ANNEXES		
1	Model Law on Factoring	