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**Item No. 5 on the agenda: Draft Instruments**

**(c) UNIDROIT Model Law on Factoring - Guide to Enactment: preliminary endorsement of the instrument**

(prepared by the Secretariat)

<i>Summary</i>	<i>Summary of work undertaken on the Guide to Enactment for the UNIDROIT Model Law on Factoring, submission of draft instrument for adoption.</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to consider adopting the draft Guide to Enactment, subject to final proofing and linguistic alignment.</i>
<i>Mandate</i>	<i>Work Programme 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related Documents</i>	<a href="#"><u>UNIDROIT 2023 – C.D. (102) Misc. 2</u></a> ; Draft Guide to Enactment (See Annexe II, confidential)

**I. INTRODUCTION**

1. The purpose of this document is to provide the Governing Council with (i) a summary of the work undertaken over the past 12 months to prepare the Guide to Enactment (Guide) for the UNIDROIT Model Law on Factoring (MLF), (ii) an overview of the draft Guide's content, and (iii) the draft Guide itself, for consideration and adoption (the draft Guide is available as a confidential document in Annexe II).

**II. BACKGROUND**

2. In 2022 the UNIDROIT Governing Council and General Assembly approved the development of a Guide to Enactment for the UNIDROIT Model Law on Factoring as a high priority project. At its 102<sup>nd</sup> session (Rome, May 2023), the UNIDROIT Governing Council adopted the UNIDROIT Model Law on

Factoring<sup>1</sup> and requested that the Model Law on Factoring Working Group begin work on the UNIDROIT Model Law on Factoring Guide to Enactment.<sup>2</sup>

### III. DEVELOPMENT OF THE GUIDE TO ENACTMENT

3. The draft Guide to Enactment has been developed by a Working Group composed of the same experts that developed the Model Law on Factoring itself, under the continued chairmanship of UNIDROIT Governing Council Member *ad honorem* Professor Henry Gabriel. Intergovernmental organisations with expertise in the field of factoring participating as observers in the Working Group on the MLF were invited to continue to participate as observers in the Model Law on Factoring Guide to Enactment Working Group. The members of the Working Group and invited observing organisations are set out in Annexe I of this document.

4. Purpose: The purpose of the Guide is to assist States in understanding, implementing, and interpreting the provisions of the UNIDROIT Model Law on Factoring. As such, the Guide seeks to explain the purpose of the Model Law, and the operation of the provisions, including detailed technical explanations where implementation of the Model Law to the domestic legislation can have a higher degree of complexity.

5. Audience: The primary audience for the Guide is government officials or legislative bodies in States considering implementing the Model Law on Factoring. Experience shows that often these will be officials from the Central Bank, the Ministry of Finance, Treasury, Ministry of Justice, or the department responsible for legislative drafting.

6. Approach: The Guide has been prepared in adherence with three guiding concepts:

- i. *Targeted* – The Guide provides information targeted for the government officials with responsibility for the implementation of the instrument.
- ii. *Accessible* – The Guide has been drafted to be accessible as possible for non-experts, given that the target audience for the document may lack deep expertise in factoring and receivables finance.
- iii. *Concise* – The Guide is as concise as possible to encourage government officials to utilise its content, although it is sufficiently discursive in explaining the technical operation of complex articles, including through the provision of practical examples.

7. Drafting approach: The drafting of the Guide was shared between five Working Group members and the Secretariat.<sup>3</sup> Working Group members and observing organisations provided feedback on each section during Working Group meetings.

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

<sup>2</sup> See Governing Council 102<sup>nd</sup> session Summary Conclusions, [UNIDROIT 2023 - C.D. \(102\) Misc. 2](#), paragraph 6.

<sup>3</sup> Louise Gullifer prepared Part I(3) and Part IV(1 – 6), Marek Dubovec prepared Part II(3), Part III(1) and the Digital Economy Supplement, Giuliano Castellano prepared Part III(2), Neil Cohen prepared Part IV(7 – 9), Bruce Whittaker prepared Part IV Annexe A (Registry Provisions) and the Secretariat prepared Part I(1-2),(4), and Part II(1-2).

#### IV. WORKING GROUP SESSIONS

8. The draft Guide was discussed over three Working Group sessions and several intersessional meetings. As previously reported to the Governing Council at its 103<sup>rd</sup> session in 2024, two initial planning meetings and the Working Group's first session were held between January and April 2024.<sup>4</sup>

9. The Working Group's second session took place in hybrid format between 16 and 19 December 2024 at the UNIDROIT Headquarters and was attended by 34 participants.<sup>5</sup> At the second session, the Working Group reviewed an almost complete draft of the Guide. The Working Group further refined the structure of the draft Guide, agreed upon the Guide's policy objectives and key features, addressed terminological issues and provided feedback on the draft Digital Economy Supplement.

10. The Working Group's third session took place in hybrid format between 9 and 11 April 2025. The third session was hosted in Beijing China, with generous support from the Beijing Arbitration Commission. The third session was attended by 34 participants.<sup>6</sup> At the third session, the Working Group reviewed the entirety of the content of the draft Guide. In particular, the Working Group decided to restructure Part I, redraft Part I(1) (facilitating access to credit through factoring), and further emphasise the importance of enacting States including the key features when implementing the MLF. At the conclusion of the third session, the Working Group decided that the draft Guide to Enactment was sufficiently developed to submit to the Governing Council with a recommendation that the Governing Council adopt the Guide to Enactment, subject to non-substantive revisions, final proofing, and linguistic alignment.

#### V. OVERVIEW OF STRUCTURE AND CONTENT

11. Annexe II of this document (confidential) contains the draft Guide, as revised by the Working Group at its third session.<sup>7</sup> The Guide has the following structure:

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<sup>4</sup> The first planning meeting was held at the International Law Institute Headquarters in Washington DC on 18 January 2024, in the margins of the Secured Transaction Coordination Conference. The second planning meeting was held online on 19 February 2024. The first full Working Group session was held as a hybrid meeting between 8 – 10 April 2024 at UNIDROIT Headquarters in Rome. During the first session, the Working Group agreed upon the working methodology, structure and general content of the Guide, and reviewed the content outlines for the different sections. The first session was attended by 36 participants. The documents from the first Working Group session are available on the UNIDROIT website at: <https://www.unidroit.org/work-in-progress/model-law-on-factoring-guide-to-enactment/#1701079938149-95840a9b-0d82>.

<sup>5</sup> The Working Group's second session was attended by ten Working Group Members; six observers from international, regional and intergovernmental organisations; 12 observers from industry associations, government and academia; and six members of the UNIDROIT Secretariat.

<sup>6</sup> The Working Group's third session was attended by ten Working Group Members; nine observers from government, international, regional and intergovernmental organisations; six observers from industry associations, government and academia; and nine members of the UNIDROIT Secretariat.

<sup>7</sup> The draft Guide to Enactment in Annexe II (confidential) reflects the major revisions made to the instrument by the Working Group at its third session, particularly in relation to the structure and content of Part I. However, it was not possible to revise the entirety of the text, due to the proximity of the scheduling of the Working Group's third session and the Governing Council meeting. Should the Governing Council adopt the draft Guide, the other proofing revisions made by the Working Group at its third session, none of which is substantive or involves policy matters, will be implemented during the final review and linguistic alignment process (see "Next Steps" section of this document).

<b>PART I – PURPOSE AND OVERVIEW</b>	
1.	Facilitating access to credit through factoring
2.	Introduction to the MLF
3.	Overview of the MLF
4.	Coordination of the MLF with other international instruments
<b>PART II – IMPLEMENTATION OF THE MODEL LAW ON FACTORING</b>	
1.	Implementation of the Model Law on Factoring within the existing legal framework
2.	Methods of implementation
3.	Common implementation challenges
<b>PART III – COORDINATION OF THE MODEL LAW ON FACTORING WITH SPECIFIC MATTERS</b>	
1.	The Model Law on Factoring and the digital economy
2.	The Model Law on Factoring and financial regulation
<b>PART IV – ARTICLE-BY-ARTICLE GUIDE</b>	
1.	General instructions on reading the MLF
2.	Chapter I – Scope and General Provisions
3.	Chapter II – Transfer of a Receivable
4.	Chapter III – Effectiveness against third parties of a transfer of a receivable
5.	Chapter IV – The Registry System
6.	Chapter V – Priority of a Transfer
7.	Chapter VI – Rights and Obligations of the Transferor, Transferee, and the Debtor
8.	Chapter VII – Collection and Enforcement
9.	Chapter VIII – Conflict of Laws
10.	Chapter IX – Transition
11.	Annexe A – Registry Provisions
<b>ANNEXES</b>	
1.	Model Law on Factoring Guide to Enactment Working Group
2.	Digital Economy Supplement (to be annexed to the digital version only).

12. Part I of the Guide (i) introduces the concept of factoring and why it is important, (ii) introduces the MLF's policy objectives and key features, (iii) provides a high level summary of the MLF's content, and (iv) explains the relationship between the MLF and other related international instruments (including the UNIDROIT Convention on International Factoring, the United Nations Convention on the Assignment of Receivables in International Trade and the UNCITRAL Model Law on Secured Transactions).

13. Part II of the Guide sets out how the MLF should be implemented and the implementation process, with detailed guidance on (i) how the MLF can be adapted to a State's legal traditions (including the State's broader legal framework and secured transactions framework), (ii) legislative

implementation of the MLF, and (iii) common implementation challenges (such as defining “factoring” and applying the law to both outright transfers and transfers by way of security).

14. Part III of the Guide provides guidance on how to coordinate the MLF with specific matters, including (i) the digital economy and (ii) financial regulation, with specific guidance for regulators on how the MLF’s private law rules should be harmonised with regulatory rules in relation to regulatory definitions, authorisation, licensing and supervision.

15. Part IV of the Guide provides general instructions on reading the MLF and an article-by-article commentary on the 54 Articles and 25 Registry Clauses in the MLF. In particular, Part IV aims to (i) provide detailed guidance on the operation of each article, (ii) explain why each article is necessary, (iii) clarify how each article might interact with other MLF articles as well as the State’s broader law, (iv) connect specific articles to the MLF’s policy objectives and key features, and (v) illustrate the operation of articles through the use of practical examples.

16. Annexe I of the Guide provides a list of Working Group members and observers involved in the drafting of the Guide. Annexe II (confidential) provides the Digital Economy Supplement, which will only be included in the digital version of the Guide (more information below).

17. The Guide contains two innovative features that the Working Group believes will be particularly useful in assisting States in correctly implementing the MLF:

- i. **Policy objectives, key features and common challenges:** Part I(2) of the MLF sets out the MLF’s five policy objectives and provides seven key features that achieve the policy objectives.<sup>8</sup> The identification of policy objectives and key features is designed to ensure States don’t inadvertently leave out specific aspects of the MLF which would significantly undermine its effectiveness in facilitating factoring. Similarly, Part II(3) provides specific guidance in relation to common challenges that have arisen in States that have begun implementing the MLF since it was adopted in 2023.
- ii. **Digital economy supplement:** The Working Group decided that Part III(1) of the Guide should avoid providing detailed guidance on digital economy matters that could quickly become out of date. Instead, the Working Group has included such content in an accompanying “Digital Economy Supplement”, which is annexed to the draft Guide available in Annexe II (confidential) of this document. The Digital Economy Supplement provides up-to-date information on how the MLF can be implemented alongside recent technological developments, with detailed guidance on digital assets, virtual currencies and electronic platforms and exchanges. Including the Digital Economy Supplement separately will allow it to be updated as needed to reflect changes in technology, without revising the Guide to Enactment itself. The Digital Economy Supplement will be annexed to the digital version of the Guide and available on the UNIDROIT website.

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<sup>8</sup> The MLF’s five policy objectives are (i) transparency, predictability and certainty, (ii) transactional efficiency, (iii) balanced rules for parties, (iv) flexibility in facilitating a variety of different financing arrangements, and (v) facilitation of cross-border transactions and international harmonisation. The MLF’s seven key features are (i) application to both outright transfers and security transfers, (ii) clear scope in defining receivables, (iii) simple legal requirements for the transfer or grant of security in receivables, (iv) effectiveness of transfers of receivables notwithstanding agreements between the debtor and transferor limiting such transfers, (v) registration of a notice in order to achieve third party effectiveness and priority of a transfer, (vi) efficient enforcement and collection rules, and (vii) conflict of law rules based on the location of the debtor for third party effectiveness and priority.

## **VI. NEXT STEPS**

18. Should the Governing Council adopt the draft Guide, the Secretariat will (in cooperation with the Working Group Chair) further proof the document, ensure consistent use of terminology, update internal cross-references, add external cross-references to the UNIDROIT Principles on Effective Enforcement (which is being finalised simultaneously to the Guide), prepare the French version of the Guide and check linguistic consistency. The final English version of the Guide would then be published by the end of 2025 with the French to follow as soon as possible thereafter.

19. Once adopted, it is anticipated that the Guide will be launched at the 9<sup>th</sup> International Secured Transactions Coordination Conference, which will be hosted by UNIDROIT in Rome in 2026. The Guide will also be incorporated into UNIDROIT's implementation strategy for the MLF (see document UNIDROIT 2025 – C.D. (105) 20).

## **VII. ACTION TO BE TAKEN**

20. *The Governing Council is invited to consider adopting the draft Guide to Enactment, subject to final proofing and linguistic alignment.*

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

1. Henry GABRIEL — Professor of Law, Elon University, Member *ad honorem* Governing Council United States of America (Chair)
2. Giuliano CASTELLANO — Associate Professor, Asian Institute of International Finance Law (AIIFL), Hong Kong
3. Neil COHEN — 1901 Distinguished Research Professor of Law, Brooklyn Law School, United States of America
4. Michel DESCHAMPS — Université de Montréal, McCarthy Tetrault, Canada
5. Marek DUBOVEC — Director of Law Reform Programs, International Law Institute, United States of America
6. Alejandro GARRO — Adjunct Professor of Law, Colombia Law School, United States of America
7. Louise GULLIFER — Rouse Ball Professor of English Law, CHair of the Faculty of Law, University of Cambridge, Fellow of Gonville and Caius College, United Kingdom
8. Megumi HARA — Professor of Law, Chuo University, Japan
9. Catherine WALSH — Professor of Law, McGill University, Canada
10. Bruce WHITTAKER — Senior Fellow, University of Melbourne, Australia

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

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