



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

EN

Model Law on Factoring
Guide to Enactment Working Group
Second session (hybrid)
Rome, 16 – 19 December 2024

UNIDROIT 2025
Study LVIII B – W.G.2 – Doc. 3
English only
April 2025

SUMMARY REPORT
OF THE SECOND SESSION
(Hybrid, 16 – 19 December 2024)

1. The second session of the Working Group to prepare a Guide to Enactment (“the Guide”) for the UNIDROIT Model Law on Factoring (MLF) took place in hybrid format between 16 and 19 December 2024. The Working Group was attended by 34 participants, comprised of 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 (the list of participants is available in Annexe II).

Item 1: Opening of the session by the Chair

2. *The Chair* of the Working Group and Member *Ad Honorem* of the UNIDROIT Governing Council, Mr Henry Gabriel (“Chair”), welcomed all participants to the second session. *The Chair declared the session open.*

Item 2: Adoption of the agenda and organisation of the session

3. *The Working Group* adopted the draft Agenda ([Study LVIII B – W.G.2 – Doc. 1](#), available in Annexe I of this report).

Item 3: Implementation update on the UNIDROIT Model Law on Factoring

4. *The Secretariat* provided an update on the implementation of the MLF. It was explained that as a legislative Institute, UNIDROIT had limited resources to support technical assistance and therefore relied on partnerships with key stakeholders to support the promotion and implementation of the MLF. It was noted that the Institute had been facilitating the implementation of the MLF through (i) the promotion of the instrument at major relevant international fora, (ii) the preparation of expert translations of the instrument, and (iii) supporting legislative reform projects.

5. In relation to translations, the Secretariat noted that the preparation of Spanish and Turkish translations of the MLF were nearing completion, and that Arabic, Russian and Japanese translations were also anticipated. It was explained that Working Group member Alejandro Garro was the primary drafter of the Spanish translation, whereas the Turkish Factoring Association had contracted Working Group observer Ms Deniz Gungor to prepare the Turkish translation. *Alejandro Garro* provided an update on the preparation of Spanish translation, noting that a range of experts from Spanish-speaking countries had been consulted. It was explained that the Spanish translation was attempting to remain consistent with the terminology of the Spanish version of the UNCITRAL Model Law on Secured Transactions (MLST), although in some instances new terminology had been adopted (it was noted that the concept of “proceeds” in the Spanish version of the MLST was too broad for the purposes of the MLF, so a different term had instead been used). In relation to the Turkish translation, *an observer representing of the Association of Turkish Financial Associations* provided an update on the project. It was noted that a Turkish stakeholder consultation event had been held in Istanbul in November 2024, in order to receive feedback on the draft translation.¹ It was explained that the Turkish factoring industry had already begun working on proposed amendments to Turkish law to better align it with the MLF, based on the draft Turkish translation.

6. In relation to legislative reform projects, *Marek Dubovec* noted that the International Law Institute was working on law reform projects in Ukraine, Jordan and Uzbekistan that aimed at improving the legal frameworks for factoring in those States, based on the MLF. It was explained that the projects included both private law reform based on the MLF, as well as regulatory reforms. *An observer representing the World Bank Group* (WBG) noted that the WBG had made a strategic decision that the World Bank itself would become more engaged with technical assistance projects

¹ See <https://www.unidroit.org/unidroit-participates-in-model-law-on-factoring-consultation-event-for-turkish-stakeholders/>.

on legal and regulatory matters, with support from International Finance Corporation (IFC) colleagues that had previously been involved in such projects. It was noted that the World Bank was focused on supporting governments around the world in building national platforms that facilitated supply chain finance, with active projects underway in Ghana and Tanzania. It was further explained that the legal frameworks underpinning the national platforms often required the amendment of factoring provisions, which the World Bank were working to align with the MLF. *An observer representing the European Bank for Reconstruction and Development (EBRD)* provided an overview of their implementation work in relation to factoring reforms, with reference to ongoing projects in Ukraine, Jordan, Palestine, Georgia and North Macedonia.

7. *The Working Group noted the update, and thanked stakeholders for their work on the implementation of the MLF.*

Item 4: Consideration of the draft Guide to Enactment (Study LVIII B – W.G.2 – Doc. 2)

8. The Secretariat introduced the draft Guide to Enactment, as contained in [Study LVIII B – W.G.2 – Doc. 2](#). It was explained that the draft Guide had been developed in consistency with the working methodology and drafting approach adopted by the Working Group at its first session,² and the content was based on the section summaries prepared in March 2024³ and amended by WG during its first session.⁴ It was noted that the draft Guide was the first full version of the instrument, although some sections were still structured as summary bullet points. It was further noted that the draft Digital Economy Supplement was also contained at the end of the draft Guide. The Secretariat thanked Peter Mulroy, Louise Gullifer, Marek Dubovec, Giuliano Castellano, Neil Cohen, and Bruce Whittaker for drafting sections of the instrument, and thanked Alejandro Garro for providing comments on the commentary of the Registry Provisions in Part IV Annexe A. Finally, the Secretariat noted that the Guide would need to be updated prior to finalisation to provide cross-references to the UNIDROIT Best Practices on Effective Enforcement instrument, once that instrument was finalised later in 2025.

9. The Working Group undertook a paragraph-by-paragraph review of the draft Guide, making revisions to content, structure and drafting.⁵ The following paragraphs contain a summary of the main changes made to the draft Guide.

PART I – PURPOSE AND OVERVIEW

10. The Working Group decided to explain at a prominent point in the Guide that the concept of “transfers” in the MLF covered both outright and transfers by way of security (security transfers), and that references to transfers throughout the Guide should be generally understood to cover both outright transfers and security transfers. The Working Group further agreed that where the context particularly warranted it, this point could be re-emphasised throughout the Guide by the inclusion of footnotes.

² See UNIDROIT 2024 – Study LVIII B – W.G.1 – Doc. 2, available <https://www.unidroit.org/wp-content/uploads/2024/03/Study-LVIII-B-%E2%80%93-W.G.1-%E2%80%93-2-Development-of-the-MLF-Guide-to-Enactment.pdf>.

³ See UNIDROIT 2024 – Study LVIII B – W.G.1 – Doc. 3, available <https://www.unidroit.org/wp-content/uploads/2024/04/Study-LVIII-B-%E2%80%93-W.G.1-%E2%80%93-3-GtE-section-summaries.pdf>.

⁴ See UNIDROIT 2024 – Study LVIII B – W.G.1 – Doc. 6, available <https://www.unidroit.org/wp-content/uploads/2024/11/Study-LVIII-B-%E2%80%93-W.G.1-%E2%80%93-6-Report.pdf>.

⁵ All changes made to the draft Guide during the second session are set out in tracked changes in UNIDROIT 2025 – Study LVIII B – W.G.3 – Doc. 3.

11. **Section 1:** the Working Group approved Part I Section 1.

12. **Section 2:** the Working Group decided to:

- (i) Retain Part I Section 2 as an explanation of factoring from a business perspective.
- (ii) Redraft the section to ensure that the business terminology was better aligned with the MLF's legal terminology.
- (iii) Explain that the term "factoring" covered the broad range of receivables financing arrangements within the scope of the MLF, and that the Guide should generally use the term "factoring" rather than "receivables finance".
- (iv) Better distinguish between the broader notion of "supply chain financing" and "payables finance" (reverse factoring).
- (v) Include additional information on (a) transfer of receivables by way of security, (b) transfer of receivables for the purpose of collection, and (c) how factoring facilitated off-balance sheet financing.
- (vi) Move paragraphs 16 – 18 to the start of Part I Section 2, on the basis that information on the economic importance of factoring would be particularly important to policymakers (the Guide's primary audience).
- (vii) Retain paragraphs 14 and 15 on securitisation and business risk, subject to redrafting.

13. **Section 3:** The Working Group approved Part I Section 3 paragraphs 19 - 22, subject to minor amendments to paragraph 19. The Working Group approved the Guide's Policy Objectives and Core Concepts (paragraphs 23 – 27), subject to several revisions, including the following: (i) the content of paragraph 24(vi) (enabling of receivables finance) was brought into the chapeau of paragraph 24, (ii) the application of the MLF to both outright assignments and security assignments was made more prominent in both the policy objectives and core concepts, (iii) in relation to the Core Concepts, "application to proceeds of receivables" was replaced with "clear scope in defining receivables", and (iv) "enforcement rules that can also apply in insolvency" was replaced with "efficient enforcement rules". The reference to transition rules was also deleted from the Core Concepts.

14. **Section 4:** The Working Group approved Section 4 subject to minor revisions, including changes to paragraph 31 clarifying that the ability of parties to vary provisions was limited to the clauses not affecting third parties.

15. **Section 5:** The Working Group approved Part I Section 5, subject to several revisions. The Working Group agreed to (i) remove the bracketed sentences from paragraph 48, (ii) retain paragraph 50, (iii) address the content of paragraph 51 in a footnote, (iii) include a reference to the UNIDROIT, UNCITRAL and HCCH joint publication on secured transactions in a footnote, and (iv) include an additional recommendation in paragraph 49 that States that had already established a registry for notice of security rights should not establish a separate registry for notices relating to the transfer of receivables.

PART II – IMPLEMENTATION OF THE MODEL LAW ON FACTORING

16. **Introduction:** The Working Group approved the introduction to Part 2 (paragraphs 52 – 54), subject to the reordering of certain paragraphs.

17. **Section 1 paragraphs 55 – 57:** The Working Group approved the paragraphs and additionally decided to (i) remove "assignment" as an example of terminological adaption, as the matter created unnecessary complexity, (ii) redraft paragraph 56 to emphasise that the MLF could be implemented in States with different legal traditions, (iii) delete generalisations in relation how

particular legal traditions might deal with specific issues, and (iv) delete the sentences regarding where to place the MLF rules in the enacting States law (enactment issues), and instead address the matter later in the Guide. **Paragraphs 58 – 82:** The Working Group approved the paragraphs, subject to changes to the areas of general law matters that were likely to interact with the MLF. The Working Group clarified that the areas provided should be (i) contract law, (ii) law of obligations, (iii) law of guarantees, (iv) set-off and defences, (v) agency law, (vi) electronic commerce law, (vii) property law, (viii) insolvency law, (ix) procedural law, (x) consumer protection law, (xi) financial regulatory law and (xii) financial law.

18. **Section 1 paragraphs 75 – 83:** The Working Group decided to retain the “waterfall” approach to reform in paragraph 75, with amendments to clarify that the MLF needed to be coordinated with existing law and should not defer to existing secured transactions law, especially if that law was not consistent with the MLST. It was further decided to delete paragraphs 76 – 83 on the basis that they provided too much detail on complex matters (proceeds) for this part of the Guide, and that these matters should instead be explained in the article-by-article commentary in Part IV.

19. **Section 2 paragraphs 84 – 90:** The Working Group decided to (i) move the content of paragraph 89 up into paragraph 87, (ii) remove generalisations about civil law and common law systems, and (iii) clarify that regardless of a States’s approach to legislative implementation, it was important for the private law rules to be aligned with regulatory rules. **Paragraphs 91 – 92:** The Working Group decided to (i) clarify in paragraph 91 that judicial interpretation was not an alternative to legislative implementation, (ii) note that regulatory guidance and judicial interpretation could be a useful first step towards legislative implementation of the MLF, and (iii) suggest that existing case law should be analysed in preparing for legislative reform. In relation to paragraph 92, the Working Group decided to expand the content of paragraph 92 to provide a brief description of the law reform process for factoring reforms (from start to finish) and then move the paragraphs to an earlier point in Part II.

20. **Section 3:** The Working Group reaffirmed that the Guide should include a section on common implementation challenges that had arisen in practice for the organisations involved in implementing the MLF. It was suggested that Part II Section 3 should set out what the common challenges were (such as confining the scope of the law to outright assignments and not cover security transfers) and highlight the risks of not following the MLF’s approach. The Working Group agreed to further consider the section at its third session, once it had been fully drafted.

PART III – COORDINATION OF THE MODEL LAW ON FACTORING WITH SPECIFIC MATTERS

21. **Section 1:** The Working Group agreed that the Guide should provide a brief summary of the kinds of issues that might arise in coordinating the implementation of the MLF with emerging technologies, with detailed and technology-specific guidance to be provided in the Digital Economy Supplement. The Working Group confirmed that Section 1 should include brief explanations on (i) digital assets and private law, (ii) virtual currencies, (iii) platforms and exchanges, and (iv) domestic electronic commerce law, without including references to specific technologies or trends that might become outdated.

22. **Digital Economy Supplement:** The Working Group also reviewed the Digital Economy Supplement, which was to be attached to the electronic version of the Guide and amended from time to time to address future technological changes. The Working Group adopted various revisions to the subsections on (i) digital receivables, (ii) monetary sum, money and currencies, (iii) receivables platforms and exchanges, and (iv) other technological applications.

23. **Section 2:** The Working Group reaffirmed the need for Section 2 in order to emphasise the importance of enacting States coordinating the implementation of the MLF alongside their regulatory

regimes. The Working Group reviewed Section 2 and provided a number of suggestions to further strengthen the content. In particular, the Working Group decided to: (i) expand the introductory paragraphs to highlight the importance of the role of regulators in supporting law reforms that facilitated access to credit, (ii) include additional examples to make certain rules sound less abstract, (iii) include further explanation on the differences between the regulation of banks and the regulation of non-banking financial institutions, (iv) include additional guidance on how the regulation of micro, small and medium sized enterprises (MSMEs) might differ from the regulation of larger institutions, and (v) avoid the use of certain specific terms, such as “regulatory arbitrage” and “circumvention”.

PART IV – ARTICLE-BY-ARTICLE GUIDE

24. The Working Group reaffirmed that Part IV of the Guide should: (i) include introductions at the start of each Chapter providing an overview of the most important matters covered in that Chapter, and (ii) include practical examples that illustrated the operation of the more complex articles.

25. **General instructions on reading the MLF:** The Working Group noted that the general instructions would be drafted intersessionally and provided to the Working Group for consideration at its third session.

26. **Chapter I:** The Working Group decided that the introduction to Chapter I should (i) emphasise the importance of the definitions of “receivable” and “transfer”, and (ii) include a detailed explanation of why the MLF covers both outright transfers and security transfers (moving that explanation up from Article 2(j)). The Working Group agreed to various revisions of the commentary on Article 1 – 4.

27. **Chapter II:** The Working Group agreed to various revisions of the commentary on Articles 5 – 8, including (i) a simple explanation of the interaction between Article 5 and Clause 12, (ii) the removal of one of the Article 6 examples, and (iii) a brief explanation of the policy rationale for the complete override of anti-assignment clauses in Article 8.

28. **Chapter III:** The Working Group agreed to various revisions of the commentary on Articles 9 – 11, including further explanation of the purpose of Article 11.

29. **Chapter IV:** The Working Group noted that the commentary on Article 12 would be fully drafted for consideration at its third session.

30. **Chapter V:** The Working Group agreed to various revisions of the commentary on Articles 13 – 19, including further explanation of the relationship between domestic insolvency law and the MLF in the commentary on Article 15.

31. **Chapter VI:** The Working Group agreed to various revisions of the commentary on Articles 20 – 30, including (i) further explanation of operation of Article 26 in the chapter introduction, (ii) relocation of some of the commentary on Article 10 to the chapter introduction, (iii) a more detailed example on the operation of Article 21(1)(b), (iv) clarification that the rules in Article 23 were subject to party autonomy, (v) further explanation on what the debtor should do if it was unsure whether there had been multiple transfers under Article 26(4) or a chain of transfers under Article 26(5), (vi) clarification that Article 27 could not be used to assert anti-assignment clauses which were rendered ineffective under Article 8, and (vii) further explanation that the concept of “reasonableness” in Chapter VI meant commercial reasonableness.

32. **Chapter VII:** The Working Group noted that the summary bullet points in Chapter VII would be converted into a full article-by-article commentary intersessionally, for the Working Group’s consideration at its third session. The Working Group agreed to various revisions of the summary

bullet points on Articles 31 - 35, including (i) further explanation of a transferee's right to enforce against a personal or property right that secured a receivable under Article 31, (ii) further explanation of why a transferee might want to sell a receivable under Article 34, and (iii) further explanation of what occurred under Article 35 when the proceeds of collection was insufficient to satisfy the secured obligation.

33. **Chapter VIII:** The Working Group agreed to various revisions of the commentary on Articles 26 - 45, including (i) added emphasis on the importance of Article 37, (ii) further explanation on the operation of Article 42(1) in relation to the relevant time for determining the location of the transferor for the purposes of the operation of the conflict of laws rules and (iii) replacement of the "escape hatch" concept with "exception" in the commentary on Article 44.

34. **Chapter IX:** The Working Group agreed to various revisions of the commentary on Articles 45 - 54, including further explanation on the what enacting States needed to do regarding the two sets of square brackets in Article 48.

35. **Annexe A (Registry provisions):** The Working Group noted that the summary bullet points in Part IV Annexe A would be converted into a full clause-by-clause commentary intersessionally, for the Working Group's consideration at its third session. The Working Group agreed to various revisions of the summary bullet points on Clauses 1 - 25, including (i) clarification of the distinction between "Registry" and "registrar", (ii) further explanation of the meaning of the defined terms in the commentary on Clause 1 (in order to ensure the terms are explained before they are used), and (iii) the inclusion of further examples in the commentary on Clause 17 (search results).

Item 5: Organisation of future work

36. *The Secretariat* noted that a revised draft of the Guide would be prepared intersessionally and provided to the Working Group for consideration at its third session. It was further noted that the third session would be the Working Group's final in-person meeting, as the UNIDROIT Governing Council was expected to approve the draft MLF at its 105th session (Rome, May 2025), and formally adopt the instrument via written procedure before the end of 2025.

37. *The Secretariat confirmed that the third session of the Working Group would take place in the week of 7 April 2025 in Beijing, China.*

Item 6: Any other business

38. No other business was raised.

Item 7: Closing of the session

39. *The Chair* thanked all participants for their contributions to what had been a productive second session. *The Chair declared the session closed.*

ANNEXE I**AGENDA**

1. Opening of the session by the Chair
2. Adoption of the agenda and organisation of the session
3. Implementation update on the UNIDROIT Model Law on Factoring
4. Consideration of the draft Guide to Enactment (Study LVIII B – W.G.2 – Doc. 2)
5. Organisation of future work
6. Any other business
7. Closing of the session

ANNEXE II**LIST OF PARTICIPANTS****CHAIR**

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Honorem*

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SECURED FINANCE NETWORK (SFN) <i>remotely</i>	Mr Richard KOHN Co-General Counsel United States of America
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<i>in-person</i>	Ms Deniz GÜNGÖR Legal Counsel Türkiye
<i>remotely</i>	Mr Güvenç KÜLLÜ Associate Attorney Türkiye

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Ms Serena MIRABELLO <i>in-person</i>	PhD candidate in Private Law Sapienza University Department of Law and economics of production activities, Former UNIDROIT Scholar Italy

UNIDROIT SECRETARIAT (*all in-person*)

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