BEST PRACTICES FOR EFFECTIVE ENFORCEMENT WORKING GROUP: PUBLIC CONSULTATION PROCEDURE

I. BACKGROUND

A. History of the project

1. The project on Best Practices for Effective Enforcement, based on a proposal of the World Bank, was preliminarily included in the 2020-2022 Work Programme by the General Assembly (A.G. (78) 12, paras 41 and 51, and A.G. (78) 3), confirming the recommendation of the Governing Council (C.D. (98) 17, para. 245). Following the mandate received by the Governing Council at its 99th session (first meeting) in 2020, (C.D. (99) A.8, paras 43-44) remote consultations with selected international experts and organisations and an internal workshop were organised to clarify the scope of the project. The Governing Council, at its 99th session (second meeting), held on 23-25 September 2020, approved the proposed guidelines regarding the scope of the project, confirmed the high-priority status assigned thereto, and authorised the establishment of a Working Group (C.D. (99) B.3 and C.D. (99) B.21, paras 57-58).

2. The Working Group, which held its first session in December 2020, was invited to consider current challenges for effective enforcement and the most suitable solutions (procedures, mechanisms) to overcome them. It was agreed that the goal of the project would be to draft best practices, accompanied by comments, designed to improve the effectiveness of enforcement, combating excessive length, complexity, costs, and lack of transparency, while at the same time ensuring adequate protection of the rights of all parties involved. Such best practices should consider both enforcement by way of public authority and non-judicial enforcement of security rights, as well the impact of modern technology on enforcement, both as an enabler of suitable solutions and as a potential source of additional challenges to be addressed.

3. At its 81st session (A.G. (81) 9, paras 55 and 67), the General Assembly endorsed the recommendation of the Governing Council at its 101st session (C.D. (101) 21, para. 187) to keep the project in the 2023-2025 Work Programme, in order to ensure its completion within the next Triennium.

B. Working Group composition and summary of Working Group and Drafting Committee activities until the tenth session (March 2025)

4. The Best Practices for Effective Enforcement Working Group is currently composed of the following individual experts: Ms Kathryn Sabo (Chair) – former Deputy Director General & General Counsel, Constitutional, Administrative and International Law Section, Department of Justice (Canada) and Member of the UNIDROIT Governing Council; Ms Geneviève Saumier (Coordinating Expert) – Dean of the *Faculté de droit, Université de Montréal* (Canada); Ms Valeria Confortini – Professor of Private Law and Head of the Department of Law, *Università Telematica Pegaso* (Italy); Mr Neil Cohen – 1901 Distinguished Research Professor of Law, Brooklyn Law School (USA); Mr Fernando Gascón Inchausti – Professor, *Universidad Complutense de Madrid* (Spain); Mr LIU Junbo – Associate Professor, China University of Political Science and Law (China); Mr Fábio Rocha Pinto e Silva – Pinheiro Neto Advogados, São Paulo (Brazil); Ms Teresa Rodríguez de las Heras Ballell – Professor, *Universidad Carlos III Madrid* (Spain); Mr John Sorabji – Associate Professor, University College London (UK); Mr Felix Steffek – Professor, University of Cambridge, and Co-Director of the

Centre for Corporate and Commercial Law; and Mr Rolf Stürner – Emeritus Professor, *Albert-Ludwigs-Universität Freiburg* (Germany). The Working Group gratefully recognises the participation of former members Mr Jason Grant Allen, Partner, Stirling & Rose Digital Law (Australia); Mr He Qisheng, Professor of International Law, Beijing University (China); Ms Carla Reyes, Assistant Professor of Law, SMU Dedman School of Law (USA).

5. The following **organisations** are also currently part of the Working Group as observers: the *Comité de Implementación de Garantías Mobiliarias* (Colombia); the European Bank for Reconstruction and Development (EBRD); the European Collection and Enforcement Network (CONNEXX); the Hague Conference on Private International Law (HCCH); the Secured Finance Network; the Supreme Court of China; the *Union Internationale des Huissiers de Justice* (UIHJ); the United Nations Commission on International Trade Law (UNCITRAL); and the World Bank Group (WBG). The Working Group gratefully recognises input received in previous sessions by the Confecámeras (Colombia); the International Association of Legal Science (IALS); the Kozolchyk National Law Center (NatLaw); the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law; the Organisation of American States (OAS); and the Zemgale Regional Court - Latvia.

6. Between its establishment at the end of 2020 and its tenth session in March 2025, the Working Group **met in plenary ten times (twice a year) and held an additional extraordinary session** (September 2024).

7. Throughout the development of the project, the Working Group has continued its activity in the intersessional periods, through the remote work of three informal Subgroups as well as through several virtual coordination meetings of the focal points of the Subgroups. In addition, a **Drafting Committee** was set up with the task of reviewing the draft best practices on which an agreement on policy had been attained. The current composition of the Drafting Committee is as follows: Chair Kathryn Sabo, Coordinating Expert Geneviève Saumier, Neil Cohen, Fernando Gascón Inchausti, Teresa Rodríguez de las Heras Ballell, John Sorabji, and Rolf Stürner. The Drafting Committee worked, for the most part, through email exchanges. It also met in its full composition, including the Chair and the Secretariat, several times, both virtually and in-person around the Working Group sessions, with participation of other members of the Working Group when their input was considered to be necessary.

8. For the **Reports** of each session, please see the project's dedicated page, where detailed Reports are published. A summary of Secretariat's and Working Group's activities, including intersessional activities, is also available in the report presented to the 105th session of the Governing Council.

C. Informal consultations and awareness-raising activities

9. Throughout the development of the project, several consultation activities have been undertaken by the Secretariat to provide the Working Group with relevant information from various legal systems. In particular, the Secretariat, pursuant to the mandate received from the Working Group, and in close cooperation with the EBRD, conducted consultations in the form of interviews and questionnaires in order to gather data on challenges, options, and practices for effective enforcement in diverse jurisdictions (among others, Egypt, Greece, Japan, Kazakhstan, Latvia, Mongolia, and Ukraine). Moreover, the Secretariat conducted background research in relation to other legal systems (among others, Brazil, China, Finland, France, India, Mozambique, Portugal, Russian Federation, Rwanda, and Singapore).

10. The Working Group sessions were routinely enriched by special presentations by experts from varied backgrounds, including representatives from the eBRAM (Electronic Business-Related Arbitration and Mediation) International Online Dispute Resolution Centre, Hong Kong; the EBRD (Ms

Bradautanu); the World Bank (Ms Mocheva Pavlova); and the Council of Europe (Mr Blasone). The Secretariat also gratefully acknowledges the documents and information shared by the EBRD Legal Transition Team on the organisation of enforcement organs.

D. Submission of preliminary drafts to the Governing Council

11. Upon authorisation of the Chair and the Working Group, the Secretariat submitted to the 102nd session of Governing Council, on a confidential basis, and by way of example, the preliminary texts of two sections revised by the Drafting Committee, respectively the section of Part I on information regarding the debtor's assets, and the section of Part II on the secured creditor's right to obtain possession of collateral after default. The following year, the draft outline of the entire instrument and several sections of best practices and related Commentary that had already been discussed and agreed upon by the Working Group were submitted to the 103rd session of the Governing Council. In particular, the Governing Council received drafts of the following Sections from Part I: Sections (now Chapters) III on enforceable instruments, IV on information regarding the debtor's assets, and V on digital registration of enforceable instruments and enforcement measures and their outcome. In relation to Part II on enforcement of security rights, the Governing Council received drafts of Section (now Chapter) I containing general principles on enforcement of security rights over movables and Sections (now Chapters) II on the secured creditor's right to obtain possession of collateral after default, III on the secured creditor's right to realise on collateral after default, and V (now renumbered VI) on the variation of the rules governing the realisation of collateral. Finally, the draft of Part III on enforcement on digital assets was also submitted to the Governing Council. The Secretariat received useful feedback that was reported back to the Working Group for consideration.

12. The entire draft instrument was submitted to the 105th session of the Governing Council for consideration (20-23 May 2025). The Governing Council approved the draft instrument in principle and authorised the opening of a public consultation procedure.

II. OVERVIEW OF THE DRAFT INSTRUMENT

A. Aim of the draft instrument

13. Effective enforcement of commercial claims is recognised as vital for a developed credit market, improved access to credit, increase in trade and investment, and overall economic development and sustained growth. It is also recognised, however, that most legal systems are seeking to improve the effectiveness of enforcement, combating excessive length, complexity, costs, and lack of transparency of such procedures. As noted above, the general aim of the instrument is to develop a legal tool to address the current challenges to a well-functioning domestic law system for enforcement. The instrument would offer national legislators a set of global standards and best practices designed to improve the domestic normative framework applicable to enforcement of creditors' claims, both secured and unsecured. While it is noted that enforcement is strongly influenced not only by the broader legal context and interconnection with other areas of the law, and also by the specific social and economic realities in each jurisdiction, many legal systems face common challenges, such as adapting traditional enforcement laws to the needs of modern economies, considering how to incorporate best practices on nonjudicial enforcement, and making the best of the opportunities offered by technological developments. Thus, the envisaged instrument is intended to provide helpful guidance for legislators wishing to improve their domestic law, while contributing to the emergence of common minimum standards and best practices for domestic procedures as a necessary basis for improvement of international cooperation in this area.

14. The importance of ensuring effective and adequate enforcement of claims is currently recognised in general terms in several existing international instruments dealing with either

procedural law or secured transactions. The future instrument is therefore building upon existing guidance already contained in various other UNIDROIT instruments (including the ALI/UNIDROIT Principles of Transnational Civil Procedure and the ELI-UNIDROIT Model European Rules of Civil Procedure, as well as the Cape Town Convention on International Interests on Mobile Equipment and its Protocols); in international instruments developed by UNCITRAL on secured transactions (the UNCITRAL Legislative Guide on Secured Transactions, the UNCITRAL Model Law on Secured Transactions, and related documents), and in other instruments offering global practical guidance (in particular, the Global Codes of Enforcement adopted by the International Union of Judicial Officers (*Union internationale des huissiers de justice,* UIHJ)). Only a few existing global and regional instruments, however, specifically address mechanisms and procedures for enforcement, and there is no instrument setting out global standards in a comprehensive, detailed, and practice-oriented manner, to achieve efficient, cost-effective, timely and fair (judicial and non-judicial) enforcement of contractual claims. The Best Practices for Effective Enforcement aim at filling this gap.

B. Format

15. Following the guidance provided by the Governing Council, the Working Group confirmed that it would be neither appropriate nor feasible to draft a binding international instrument (*i.e.*, a convention), a legislative instrument such as a model law, or detailed principles or rules structured as a comprehensive code. A guidance document containing best practices avoiding "one-size-fits-all" solutions was considered to be a better option. The following main reasons were cited for choosing this type of instrument: the close interconnection of enforcement with several areas of the law (property law, insolvency, constitutional law, etc.) where there is a divergence of national legal concepts and approaches; various national cultural, social and economic situations; and the dynamism of technological developments applied to enforcement.

16. The draft instrument was therefore developed in the form of recommendations of best practices with commentary and illustrations of particular case scenarios, which point to relevant potential issues to be considered in reforming or further developing this area of the law, or suggest examples of best practices drawn from existing models. The Best Practices do not purport to exhaustively regulate enforcement but rather offer guidance where it was considered appropriate to do so. The Best Practices, moreover, take into account recent developments linked to the use of technology as possible innovative mechanisms to render enforcement more efficient. The comments explain the background and provide the reasons why one particular best practice was followed.

C. Scope and general structure

17. The draft instrument is composed of three Parts: Part I on Enforcement by way of public authority, Part II on Enforcement of security rights, and Part III on Enforcement on digital assets. This structure implements the original proposal of the World Bank Group and the guidance initially provided by the Governing Council that the instrument should cover the enforcement of both unsecured and secured claims and should consider the impact of new technologies in enforcement. It was purposely chosen, after thorough discussions within the Working Group, with the additional purpose of underlining the non-comprehensive character of the instrument.

18. Part I contains general recommendations on enforcement by way of public authority. Its recommendations focus on the issues that create more difficulties in enforcing creditors' rights through public authorities and for which a harmonised legal best practice could be developed. The Working Group strived to present the recommendations in a more user-friendly way than the legislation in many legal systems, where the rules applicable to traditional enforcement procedures are scattered among different acts or laws and sometimes secondary regulations (for more information on the content of Part I see below, paras 47-58).

19. Part II, on the other hand, only covers enforcement of security rights specifically and focuses on facilitating the effectiveness of *non-judicial* enforcement mechanisms, which are presented as a best practice for enforcement in this area. There are, undoubtedly, significant interconnections between judicial and non-judicial enforcement, which the instrument acknowledges, including appropriate cross-references and *ad hoc* recommendations (for more information see below, paras 59-66).

20. Finally, the last part of the draft instrument (Part III) is devoted to enforcement on digital assets. The reason why the Working Group decided to devote a separate part of the instrument to digital assets is to clarify some of the issues that had recently arisen in case law in various jurisdictions with respect to effectively enforcing creditors' rights on assets that may have a significant economic value, but for which the application of general enforcement procedures and measures is often subject to challenges. Moreover, this Part was intended to offer additional guidance to legislators with respect to the general provisions on enforcement of the UNIDROIT Principles on Digital Assets and Private Law, which refer to "other" (*i.e.*, non-Principles) law to regulate this matter (see below, paras 67-68). In respect to other matters related to the impact of technology, the Working Group had considered the appropriateness to cover them in an additional Part IV. After thorough discussions, however, it was decided that the Best Practices already incorporated multiple references to technology as a means to support the effectiveness of enforcement, and that therefore an additional separate part would be either too general or repetitive. The Introduction to the instrument would highlight the importance of (new) technologies for enforcement and mention the relevant recommendations and comments for ease of reference.

21. In accordance with the mandate received by the Governing Council to proceed with caution in certain matters, the Working Group agreed to limit the number of best practices specifically addressing consumers, and not to address insolvency-related issues specifically but to focus on developing guidance on general enforcement procedures and measures.

D. Overview of the content of the draft instrument (recommendations and comments)

General

22. The draft instrument is submitted to public consultations. The Secretariat notes that the final instrument will be preceded by an Introduction, which is not contained in the present draft, which will relate the history of the project, explain its aim and addressees, the choice of format, and more thoroughly elucidate the structure and scope of the instrument.

Part I - Enforcement by way of public authority

23. Part I is intended to provide guidance on general enforcement procedures which are carried out by public authorities. It is based on a number of general principles enumerated in Chapter I: the protection of the fundamental right to secure the effective enforcement of substantive rights, which is considered an integral aspect of the right of access to justice; the protection of a third party's or a debtor's fundamental rights in so far as doing so does not unduly undermine the effectiveness of the creditor's fundamental right to effective enforcement; the principle that enforcement should be effected through regular proceedings that have a clear legal basis; the importance of party disposition over enforcement proceedings; the parties' right to be heard; and the requirement that enforcement proceedings should be managed effectively and proportionately by enforcement organs, which includes the need to implement effective and proportionate sanctions for non-compliance with obligations that arise in enforcement proceedings. The comments to the recommendations in Chapter I already contain some examples of the application of the general principles and how the interests of the parties and third parties that are protected by them are balanced throughout the instrument, considering the primary goal of ensuring the effectiveness of enforcement. We will highlight some of

them in the following paragraphs, especially those that were the object of debate within the Working Group before reaching a consensus.

24. Chapter III contains best practices on the requirements for the commencement of the proceedings. It gives guidance to legislators on the advisable threshold of the requirements of form, content, and authenticity of the documents that can be used by the creditor to open an enforcement procedure ("enforceable instruments") (Recs 9-11), and present as good practice that they be digitised and managed via individual registers or systems of registers that facilitate automated processing (Recs 12-14 and Chapter V). It also implements the principle of parties' disposition, insofar as the opening (and continuation) of the procedure and the request for registration of the enforceable instrument are based on the creditor's initiative. The Secretariat would like to draw the Governing Council's attention, in particular, to the enumeration of types of enforceable instruments, which seeks to introduce various options of expedited procedures to obtain such an instrument drawn from practices in different legal systems. The recommendations further cover other private documents (*e.g.*, invoices or similar documents) that some legal systems consider enforceable if no opposition is raised. Enforceability can be obtained through a warning notice procedure giving the debtor the possibility to either fulfil the claim or present opposition to the registration of the document as an enforceable instrument, failing which the court or competent enforcement organ may proceed with registration.

25. Chapter IV addresses the obligations of the debtor and third parties concerning disclosure, the enforcement officer's rights to seek information, and what measures are advisable in case of non-compliance. Fundamental to the effective operation of these recommendations are both the duty of cooperation and the general duty of disclosure, which is owed by the debtor but may also be owed, depending on circumstances, by third parties. This Chapter underlines the importance of the enforcement officer's right to actively search for information about assets or conduct searches upon the debtor's consent or a court order, *e.g.*, by appointing an expert to access digital storage, provided that the measure is proportionate and appropriate and considering existing civil procedure privileges.

26. An innovative feature of the Best Practices is contained in Chapter V, that makes provision for the setting up of registers or systems of registers where enforceable instruments against debtors of commenced enforcement procedures, results of disclosure, and records of all enforcement measures and their outcome should be stored in digital form, to ensure adequate coordination and efficiency of proceedings. The draft instrument recommends that such register or registers be supervised by a court or other public authority to ensure their reliability and the protection of the interests of all parties involved. As legal systems are increasingly adopting digital platforms to manage civil proceedings, including the enforcement phase, it is envisaged that legislators may draw inspiration from Chapter V in regard to issues such as supervision options, content to be stored, accessibility, protection of data, and the need for adequate communication with registries set up for other purposes but which contain information on rights encumbering debtors' assets (*e.g.*, security interest registries, registries of liens).

27. Chapter VI on regular modes of enforcement represents the core of the recommendations in Part I. It is based on the assumption that enforcement measures should generally be those that secure the most efficient means by which an economic return from the seized asset can be realised. It also recommends a reasonably proportionate relationship between the value of the seized assets and the amount of the claim subject to enforcement, including interests and costs. The recommendations strive to be functional and are tailored to address problems that may arise in practice when enforcing different types of claims (monetary and non-monetary) on diverse types of assets (that may require different enforcement measures, an adaptation of the way measures are implemented, or a combination of enforcement measures to achieve the desired result). They attempt to strike an appropriate balance between fairness and efficiency, considering the need to ensure cost- and time-effective enforcement as well as proportionate protection of debtors in specific circumstances, as well as of third parties. Legislators are made aware of the potential coexistence of

creditors interested in seizing and thus securing the proceeds of sale of the same asset, and the need to regulate this coexistence.

28. Chapter VI, in particular, includes enforcement measures against the debtor's tangible movables (subsection 1.1) and immovables (subsection 1.4) for monetary claims. The following recommendations were especially debated during the sessions: (i) for both types of assets, giving preference to seizure and subsequent public sale but offering enforcement officers and parties the flexibility to use alternative means to realise the value of the asset (Recs 28-29, 48); (ii) regarding immovables, the recognition of the usefulness of receivership or analogous entrustment to a third party in those situations where the most advantageous solution is to lease or rent the asset or otherwise manage it with a view of applying the proceeds to the creditor's satisfaction (Rec. 50); and (iii) regarding immovables, the recommendation on eviction following seizure and sale (Rec. 49), according to which, while as a general rule forced eviction should be granted with a short period of time for the property to be vacated by the debtor or the family, a stay of eviction for a short period of time could be sought if the debtor and their family are particularly vulnerable and habitually resident in the property subject to seizure.

29. Chapter VI also provides recommendations for third-party debt orders, which cover enforcement on bank accounts, earnings, and receivables (subsection 1.2), underscoring the desirability of introducing automated enforcement systems that are particularly effective for these types of assets and already used in many jurisdictions. In relation to other types of intangible assets, the recommendations single out a number of specific cases (see subsection 1.3), preceded by a more general recommendation that links enforcement to the legal assignability or transferability (as opposed to contractual limits to them) as the only way to obtain an economic return where monetary enforcement is concerned (see Rec. 37).

30. In respect to Chapter VI, the Secretariat finally wishes to draw attention to the recommendation on the use of online auctions to sell seized assets, purposely placed in a separate section to ensure visibility and to underscore the advantages of their use (subsection 1.5). The draft instrument recommends their being available for all types of assets, including immovables, a feature that represents an important innovation in respect to those legal systems still adopting a more restrictive approach.

31. The regular modes of enforcement in Chapter VI are complemented by Chapter VII addressing special modes of enforcement (considered to be useful in those situations where, in the interest of promoting cost-effective and efficient enforcement, there is a need to combine multiple, different modes or appoint a third party to fully realise the creditor's interest, such as a receiver) and Chapter IX on provisional measures to protect a creditor's right to secure the effectiveness of future enforcement. On the other hand, Chapter VIII contains recommendations on the admissibility and scope of enforcement measures that apply to debtors personally. In those cases where public enforcement cannot work as an effective substitute for an action that can only be taken by a debtor, it is recommended to complement enforcement rules with effective measures to promote debtors' compliance with their obligations, that either operate on the debtor's assets directly, or have an effect upon the debtor including through fines or coercive measures that operate personally on the debtor (*e.g.*, those that provide for restrictions on personal freedoms). The draft instrument, however, also recommends that the use of any form of sanction should be a last resort (see Rec. 64) and should always be subject to two fundamental principles that ensure their exceptionality: inappropriateness of a substitute action, and proportionality.

32. Chapter X covers the mechanisms that protect the rights of the debtor and third parties in those circumstances where an improper interference with such rights is alleged (opposition). As this is an area where legal systems vary considerably in their approach and are often excessively complicated, the Best Practices strived to introduce a simpler taxonomy to avoid overlapping procedures and measures as well as overlapping competence of different organs. The Working Group

discussed the extent to which such oppositions would entail setting aside the enforcement procedure or granting a stay, reaching the conclusion that while such actions would be left to the discretion of the courts competent for the enforcement, the latter method should be preferred to the former particularly in the case of the debtor's opposition, and granting a stay should, in any event, be exceptional (*e.g.*, where there is an actual risk that if enforcement proceedings continue pending the outcome of the opposition proceedings, irreparable harm will be done) and subject to conditions (*e.g.*, posting of security).

33. In the course of the development of the project, various experts and organisations raised the issue of the importance of providing at least some general guidance regarding the structure of enforcement organs and their competences. Thus, the draft instrument contains a few general recommendations regarding enforcement organs in Chapter II, which allow a better understanding of the following Chapters, as well as a more articulated set of recommendations in Chapter XI on the organisation of the system of enforcement organs and the different options available to legislators for the setting up of the general system and the specific organisation of the courts and the enforcement agents. The Working Group agreed that in view of the different legal, economic, and cultural approaches in legal systems, it was appropriate to avoid excessively prescriptive recommendations and offer alternative options, including the additional or alternative setting up of enforcement agents from the private sector, as long as they were implemented consistently with the general principles contained in the Best Practices (such as impartiality and independence, consistent regulation and supervision, proper training and appointment procedures – see in particular Recs 82-84). Effective coordination should be ensured through the implementation of registration as provided for in Chapter V. The recommendations further recognise as best practice that enforcement agents should be permitted to promote the settlement of an enforcement process by seeking to mediate between the parties (Rec. 85).

34. Finally, Chapter XII addresses enforcement costs through a few recommendations intended to promote the development of a clear, simple, and predictable approach to the matter.

Part II - Enforcement of security rights

35. Part II covers enforcement of security rights over movables, including tangibles and receivables and other rights to payment. It also provides recommendations regarding enforcement of security rights over immovables. Its focus is on non-judicial enforcement procedures that, as already mentioned, are recommended as a best practice for the enforcement on encumbered assets. For enforcement of security rights over movables, the Working Group recognised that it was not writing on a "clean slate" in terms of setting international best practice standards for enforcement, and that existing international instruments approved at a multilateral level, including those developed by UNIDROIT and UNCITRAL, were to be considered as a point of reference. At the same time, such instruments either apply to specific industry sectors, or provide for general recommendations that needed further elaboration. Moreover, the future instrument would be addressed not only to States that have enacted substantive secured transactions law in line with international recommendations (or of which the law was already aligned with those recommendations) but also to those States with substantive secured transactions law not aligned with such standards. Those States may consider reforming enforcement practices so that they better match the economic and social policies of secured transactions. To this end, the draft instrument, when appropriate, goes beyond those precedents to add detail or to address issues that were not addressed. It also provides comments and enforcement-specific illustrations that clarify the application of the recommendations. In regard to immovables, the recommendations contained in the draft instrument (and specifically in Chapter VII of Part II) offer unprecedented international guidance informed by practices in various legal systems and do not reflect the results of any prior work by UNIDROIT or other organisations (though the Chapter does consider the appropriateness to extend at least some of the international best practices applicable to movables to enforcement on immovables).

36. All recommendations in Part II are based on the general principles contained in Chapter I, notably: that a State should allow secured creditors to enforce security rights not only by means of judicial procedures but also non-judicially, subject to the recommendations of the following Chapters; and that all rights and obligations concerning enforcement of security rights be carried out in good faith and in a commercially reasonable manner (Rec. 92). The Working Group agreed on the application of those general principles to enforcement on all types of collateral, including immovables.

37. Chapter II focuses on the secured creditor's right to obtain possession of tangible collateral after default. It recommends that legislators grant to a secured creditor the right to obtain possession of tangible collateral without first applying to a court or other authority, with a view to enhancing the economic value of secured credit. The recommendations, however, ensure that non-judicial repossession may occur only if certain procedural and substantial limitations are present, *i.e.*, the grantor (debtor) has agreed in writing that the secured creditor will have this right; reasonable notice of default has been given; the creditor acts in a reasonable manner and does not engage in aggressive behaviour or continue to attempt to obtain possession of the collateral notwithstanding resistance; and the repossession is in conformity with any applicable consumer protection law. An additional limitation applies when there are multiple items of collateral and the net amount that can reasonably be expected to be realised by disposition would be significantly in excess of the amount of the secured obligation, while the secured creditor without additional burden or expense could obtain possession of a smaller set of those items that would assure satisfaction of the secured obligation and any related costs, including expenses of repossession and disposition (see Rec. 98 and related comment). Finally, for those situations where the debtor resists relinquishing possession, an innovative recommendation on expeditious relief supporting nonjudicial enforcement is provided in Chapter V (see below, para. 65).

38. Chapter III deals with the secured creditor's right to realise the value of movable encumbered assets after default. In line with emerging best practices in the field of secured transactions, the creditor is permitted to dispose of the collateral by any method that it selects, including sale, lease, license, or other method of disposition, and to select the manner, time, place and other aspects of the method of disposition, including whether the method of disposition will be public (such as by an auction) or private (such as by a negotiated sale to a third party), as long as those choices are reasonable under the circumstances and the requirements set out in section 1 of the Chapter are met (including notice requirements and protection of third-party acquirers' rights). The recommendations expressly refer to the advantages of considering online auctions for the disposition of the encumbered assets, both in the black-letter recommendations and in the comments, where the potential impact of adopting such a method in evaluating the commercial reasonableness of the disposition is discussed. The creditor is also entitled to acquire the encumbered assets in total or partial satisfaction of the secured obligation after the occurrence of an event of default, subject to the conditions provided in section 2 (see Recs 108-109). This regime is rounded out by recommendations on the right to take over enforcement from another secured creditor, and the grantor's right to terminate enforcement.

39. The Working Group agreed on the appropriateness to devote a specific section (Chapter IV) to receivables and other rights to payment, in view of their economic importance and the need to provide specific guidance that would be sufficiently visible. The Chapter begins by addressing receivables as the benchmark for enforcement on intangible assets, extending some of its principles to other rights to payment used as collateral, whether monetary or non-monetary, and regardless of their source or form. This Chapter also explores the role of automation and digital technology, highlighting their potential to enhance efficiency and transparency in enforcement.

40. Finally, in regard to movable collateral, Chapter VI covers the role and limits of party autonomy in the variation of the rules governing the enforcement of security rights. The recommendations contained in this Part were subject to discussion within the Working Group. In the end, a solution was agreed upon according to which legislators should provide for the right of a

secured creditor to unilaterally waive or vary by agreement its rights as regards the enforcement of security rights in encumbered assets, and to vary by agreement its obligations owed to the debtor limited to the time after default. The obligations of good faith and commercial reasonableness, however, may not be waived unilaterally or be varied by agreement at any time (though parties may agree that a certain way of exercising rights and obligations conforms with those obligations unless this is manifestly not the case – Rec. 121).

41. Chapter V contains one of the most innovative recommendations, which was unanimously considered to be of great relevance to ensure the effectiveness of non-judicial enforcement on movable collateral. The recommendation was ultimately agreed upon after much discussion in the Working Group. It provides guidance on the setting up of an expeditious relief to support non-judicial enforcement (Rec. 120). In many legal systems, when a party raises opposition (particularly concerning repossession but also other enforcement actions by the creditor towards the debtor), the non-judicial procedure is turned into an ordinary judicial one, thereby frustrating the very purpose of the former. The draft instrument recommends that legislators introduce expeditious relief to deal with such issues through a speedy, simple, and concentrated procedure. Both creditors and debtors can resort to this relief, the purpose of which is to offer support when it becomes clear that a party is unwilling to comply voluntarily with the rules governing non-judicial enforcement of security interests or an order made or provisional measure granted under this process. It should generally be relied upon when facts relevant to an applicant's case are either undisputed or not the subject of credible dispute, though a court may still make orders or grant measures subject to relevant conditions in other cases. The recommendation does not purport to dictate a specific procedure but lists the typical situations where this speedy relief can be useful and the orders that a court could grant, including the possibility to take steps to promote settlement in so far as is appropriate in the circumstances.

42. Finally, Chapter VII addresses enforcement of security rights over immovables. The draft instrument recognises that for immovables, matters regarding creation and publicity of security rights, as well as issues of characterisation of the creditor's right, may vary extensively across jurisdictions. The Working Group, however, came to the conclusion that it was possible to agree on baseline best practices regarding enforcement (repossession and disposal), drawing upon the recommendations on enforcement on tangible movables to the extent they could be applied, and upon best practices found both in common law and civil law jurisdictions. In this Chapter, the most debated recommendations concerned the extent to which creditors' remedies should be limited to protect debtors when the collateral is the grantor's residence, and the relationship between the secured creditor's rights and existing third parties' rights such as leases or rental agreements (see Recs 126-127).

Part III - Enforcement on digital assets

43. As already mentioned, the Working Group agreed on the importance of including a separate part on enforcement on digital assets. As clarified in the introduction to this Part, while general enforcement measures will apply to these assets, there is a need to provide concrete additional guidance to legislators or enforcement officers on the obstacles that the application of the general enforcement regime faces when confronted with digital assets, and on possible solutions. Thus, for this Part of the instrument, the comments play a greater role than the Best Practices themselves. The Part contains a general recommendation (Rec. 131) and is then divided in two Chapters: the first, and more detailed, addressing enforcement by way of public authority, and the second consisting of a single recommendation on enforcement of security rights over digital assets.

44. Part III opens with the general recommendation that enforcement law should recognise that digital assets are susceptible to enforcement. This is based on a pragmatic approach and basic assumption (already embodied in Principle 18 of the UNIDROIT Principles on Digital Assets and Private Law - DAPL) that, irrespective of the specific legal characterisation of the asset in domestic law, the

relevant factor is whether they have economic value that can be realised in the enforcement context. In the subsequent recommendations, emphasis is given to the proper selection of measures that should take into account and be suitable for the different types of digital assets, and the different ways they are held or transferred. In some cases, a combined application of various measures may be required, including those that apply to debtors personally when a substitute measure is ineffective. The relevance of the cooperation, not only of the debtor, but also of third parties (including custodians) to ensure effective enforcement is highlighted. Such cooperation is essential in various phases of the enforcement process, from obtaining information, to seizing the assets, to realising their value, as is the need for adequate measures to counteract the lack of cooperation. The Best Practices further address the issue of the evaluation of the assets for the purposes of enforcement, and the extent of the enforcement officer's liability in the exercise of its function. In respect to enforcement of security rights over digital assets, for which both judicial and non-judicial enforcement are addressed, the Best Practices suggest the application of the recommendations in Part II to the extent they can be effectively applied to the latter situation. Consistently with Principle 17(2) DAPL, they also refer to the limits of a strictly non-judicial action for those situations where the cooperation of a third party (*i.e.*, a custodian) is needed. Finally, they provide examples of challenges in the application of the general principles of good faith and commercial reasonableness in this context.

III. FUTURE STEPS AND CONCLUSION OF THE PROJECT

Expected timetable for open consultations and approval of the instrument

45. The outcome of the consultations will be considered at the last session of the Working Group planned for **October 2025**, with submission of the instrument to the Governing Council for approval through a written procedure being envisaged by the end of the year.

French version of the instrument

46. Consistent with UNIDROIT's practice, the final instrument will be approved in two language versions: English and French. Parts of the draft instrument have already been translated. It is expected that the French version be available together with the final English version for approval by the Governing Council.

Rome, 1 July 2025