

United Nations Commission for International Trade Law
International Institute for the Unification of Private Law

UNCITRAL-UNIDROIT
MODEL LAW
ON
WAREHOUSE RECEIPTS
and
GUIDE TO ENACTMENT

UNIDROIT

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DRAFTING HISTORY

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

Consistent with the methodology agreed by the UNIDROIT Governing Council and General Assembly and the UNCITRAL Commission, the UNIDROIT Working Group held a total of six sessions from 2020 to 2023. At its 102nd session in May 2023, the UNIDROIT Governing Council adopted the draft Model Law on Warehouse Receipts for submission to UNCITRAL for State negotiations (C.D. (102) 4 rev., C.D. (102) 25 para. 80).

In parallel with the intergovernmental negotiations through UNCITRAL Working Group I, the same UNIDROIT Working Group that had developed the Model Law proceeded to prepare a comprehensive draft Guide to Enactment, which was then also sent to UNCITRAL for negotiation and completion through Working Group I. At the end of its 41st session in February 2024, Working Group I agreed to recommend the Model Law on Warehouse Receipts and the Guide to Enactment to the UNCITRAL Commission. Next, the final version of the Model Law and the draft Guide to Enactment were presented to the UNIDROIT Governing Council at its 103rd session in May 2024, and the Council unanimously adopted the draft text of the Guide to Enactment (C.D. (103) 9.2, C.D. (103) 30 para. 137). Then, the Model Law was adopted by the UNCITRAL Commission at its 57th session on 26 June 2024.

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UNCITRAL-UNIDROIT MODEL LAW ON WAREHOUSE RECEIPTS

CHAPTER I. SCOPE AND GENERAL PROVISIONS

Article 1. Scope of application

1. This Law applies to warehouse receipts.
2. For the purposes of this Law, a warehouse receipt is an electronic record or paper document issued and signed by a warehouse operator by which the warehouse operator:
 - (a) Acknowledges holding the goods covered by it on behalf of the holder; and
 - (b) Promises to deliver the goods to the holder.

Article 2. Definitions

For the purposes of this Law:

1. “Depositor” means a person who deposits goods for storage with a warehouse operator.
2. “Electronic record” means information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.
3. “Holder” of a warehouse receipt means:
 - (a) In the case of a receipt that is issued to bearer or endorsed in blank, the person in control of the warehouse receipt:

- (i) If the warehouse receipt is electronic, pursuant to a method used in accordance with article 6, paragraph 3; or
 - (ii) If the warehouse receipt is issued in paper form, by possession;
 - (b) In the case of a warehouse receipt that is issued to the order of a named person – that person, or the most recent endorsee, if in control of the receipt:
 - (i) If the warehouse receipt is electronic, pursuant to a method used in accordance with article 6, paragraph 3; or
 - (ii) If the warehouse receipt is issued in paper form, by possession;
 - (c) In the case of a non-negotiable warehouse receipt – the person to whom delivery of the goods is to be made in accordance with the terms of the receipt.
4. “Negotiable warehouse receipt” means a warehouse receipt that is issued:
- (a) To the order of a named person; or
 - (b) To bearer.
5. “Non-negotiable warehouse receipt” means a warehouse receipt that is issued in favour of a named person only.
6. “Protected holder” means a person that satisfies the requirements of article 17, paragraph 1.
7. “Storage agreement” means an agreement between a warehouse operator and a depositor that sets out the terms on which the warehouse operator agrees to store goods.
8. “Warehouse operator” means a person who is in the business of storing goods for other persons.

Article 3. Non-derogation

The provisions of this Law may not be derogated from or varied by agreement.

Article 4. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application.

CHAPTER II. ISSUANCE AND CONTENTS OF A WAREHOUSE RECEIPT; REPLACEMENT AND CHANGE OF MEDIUM

Article 5. Obligation to issue a warehouse receipt

A warehouse operator shall issue a warehouse receipt in relation to goods after receiving them for storage if requested by the depositor in accordance with the terms of the storage agreement.

Article 6. Electronic warehouse receipt

1. For the issuance and use of an electronic warehouse receipt, a reliable method shall be used:

- (a) To identify the electronic warehouse receipt;
- (b) To render that electronic warehouse receipt capable of being subject to control from its issuance until it ceases to have any effect or validity; and
- (c) To retain the integrity of that electronic warehouse receipt.

2. The criterion for assessing integrity shall be whether information contained in the electronic warehouse receipt, including any authorized change that arises from its issuance until it ceases to have any effect or validity, has remained complete and unaltered apart from any change that arises in the normal course of communication, storage and display.

3. An electronic warehouse receipt is subject to control if a reliable method is used:

- (a) To establish exclusive control of that electronic warehouse receipt by a person;

- (b) To identify that person as the person in control; and
- (c) To transfer control over the electronic warehouse receipt.

Article 7. General reliability standard for electronic warehouse receipts

For the purposes of article 6, the method referred to shall be:

- (a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in light of all relevant circumstances, which may include:
 - (i) Any operational rules relevant to the assessment of reliability;
 - (ii) The assurance of data integrity;
 - (iii) The ability to prevent unauthorized access to and use of the system;
 - (iv) The security of hardware and software;
 - (v) The regularity and extent of audit by an independent body;
 - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
 - (vii) Any applicable industry standard; or
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.

Article 8. Representations by the depositor

By requesting the issuance of a warehouse receipt, the depositor represents to the warehouse operator and to the subsequent holders that:

- (a) It has the authority to deposit the goods;

- (b) It has the authority to request the issuance of a negotiable or non-negotiable warehouse receipt; and
- (c) To the best of its knowledge, the goods are free of any rights or claims of third parties except as notified to the warehouse operator.

Article 9. Incorporation of the storage agreement in the warehouse receipt

1. A warehouse receipt may state that it includes some or all terms of the storage agreement. In that case, a copy of the storage agreement or of its relevant provisions shall be made available to potential transferees upon request by the current holder.
2. Notwithstanding paragraph 1, the warehouse operator may not invoke against a holder under article 15 any term of the storage agreement that is inconsistent with the express terms of the warehouse receipt.

Article 10. Information to be included in a warehouse receipt

1. A warehouse operator shall include the following information in a warehouse receipt:
 - (a) The words “warehouse receipt”;
 - (b) If it is negotiable, the name of the person to whose order the receipt is issued or a statement that it is issued to bearer;
 - (c) If it is non-negotiable, the name of the person in whose favour it is issued;
 - (d) The name and address of the depositor;
 - (e) The name and address of the warehouse operator;
 - (f) A description of the goods and their quantity;
 - (g) The existence of any rights or claims of third parties to the goods notified by the depositor to the warehouse operator pursuant to article 8, subparagraph (c);
 - (h) The fixed period of the storage, if any;

- (i) The place where the goods are stored;
- (j) A unique identifier for the receipt;
- (k) The date and place of issuance; and
- (l) The date of the storage agreement.

2. A missing, incomplete or incorrect statement of the information required under paragraph 1 does not affect the validity of the warehouse receipt, but the warehouse operator is not relieved from any liability that it would have under other law to any person as a result of the statement being missing, incomplete or incorrect.

3. If a warehouse receipt does not include the information required under paragraph 1, subparagraphs (b) or (c), it is presumed to be a negotiable warehouse receipt that is issued to bearer.

Article 11. Additional information that may be included in a warehouse receipt

1. A warehouse operator may also include any other information in a warehouse receipt, such as:

- (a) The name of the insurer, if any, who has insured the goods, the details of the insurance policy covering the goods and the insured value;
- (b) The amount of the storage fees if they are a fixed amount or, if they are not a fixed amount, how the fees are calculated;
- (c) The quality of the goods; or
- (d) If the goods are fungible, whether the goods may be commingled.

2. An incorrect statement of the information referred to in paragraph 1 does not affect the validity of the warehouse receipt, but the warehouse operator is not relieved from any liability that it would have under other law to any person as a result of the statement being incorrect.

3. If a warehouse receipt covers fungible goods but does not state the quality of the goods, the goods are presumed to be of average quality.

Article 12. Goods in sealed packages and similar situations

1. If the warehouse operator has no practicable or commercially reasonable means of inspecting the goods or otherwise verifying the information provided by the depositor, the warehouse operator may describe the goods, including their type, quantity and quality:

(a) In accordance with information provided to it by the depositor, by a statement to that effect in the warehouse receipt; or

(b) In the case of goods in a sealed package, by a statement to the effect that the package is said to contain the described goods and that the warehouse operator otherwise has no knowledge of the contents or condition of the contents of the package.

2. A warehouse operator who describes goods in accordance with paragraph 1 shall not be liable for any loss suffered by any person as a result of the description being incomplete or incorrect, unless the warehouse operator knew or had reasonable grounds to believe that the description was incomplete or incorrect.

Article 13. Loss or destruction of a warehouse receipt

1. In the event of loss or destruction of a warehouse receipt, the holder at the time of loss or destruction may require the warehouse operator to issue a replacement warehouse receipt subject to reasonable requirements that the warehouse operator may establish as regards:

(a) Proof of the loss or destruction of the warehouse receipt;

(b) Proof of the holder's entitlement to the warehouse receipt;

(c) An indemnity in relation to the issuance of the replacement warehouse receipt, and security in support of that indemnity; and

(d) Reimbursement of costs incurred for the replacement of the warehouse receipt, unless the storage agreement provides otherwise.

2. In the case of an electronic warehouse receipt:

(a) “Loss or destruction” as referred to in paragraph 1 occurs when any of the conditions for the issuance and use of an electronic warehouse receipt set out in article 6, paragraph 1, or any of the conditions necessary for establishing the existence of control set out in article 6, paragraph 3, ceases to be met; and

(b) “Issue a replacement warehouse receipt” in paragraph 1 may include reinstatement of control of an electronic warehouse receipt over which control has been lost.

3. If a warehouse operator fails to issue a replacement warehouse receipt pursuant to paragraph 1, the holder at the time of loss or destruction may apply to the court for an order that the warehouse operator issue a replacement warehouse receipt, including by way of proceedings in the form of [*the enacting State specifies the appropriate expeditious proceedings*].

4. A replacement warehouse receipt issued under this article shall state that it is a replacement warehouse receipt and shall cancel and supersede the warehouse receipt believed to have been lost or destroyed.

5. Only the replacement warehouse receipt issued in accordance with paragraph 4 entitles the holder, or a person nominated by the holder, to claim delivery of the goods under article 26, but a person who, in good faith, acquires the warehouse receipt believed to have been lost or destroyed retains any right to claim damages from a previous holder that may be available under other law.

Article 14. Change of medium of a warehouse receipt

1. If the holder of a warehouse receipt so requests, a warehouse operator may change the medium of the warehouse receipt from paper to electronic or from electronic to paper.
2. At the time of the change of medium, the warehouse operator shall ensure that the warehouse receipt, in its previous medium, becomes inoperative and ceases to have any effect or validity.
3. The change of medium does not affect the rights and obligations of the parties.

**CHAPTER III. TRANSFERS AND OTHER DEALINGS IN
NEGOTIABLE WAREHOUSE RECEIPTS****Article 15. Transfer of a negotiable warehouse receipt**

1. A paper negotiable warehouse receipt may be transferred:
 - (a) By endorsement and delivery, if it is issued or endorsed to the order of the person transferring it; or
 - (b) By delivery, if:
 - (i) It is issued to bearer; or
 - (ii) It is endorsed in blank or to bearer.
2. An electronic negotiable warehouse receipt may be transferred by transfer of control.

Article 16. Rights of a transferee generally

1. A person to whom a negotiable warehouse receipt has been transferred acquires:
 - (a) The benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt; and
 - (b) Such rights to the receipt and the goods as the transferor was able to convey.

2. Paragraph 1 does not limit the rights of a protected holder of a negotiable warehouse receipt pursuant to article 18.

Article 17. Protected holder of a negotiable warehouse receipt

1. A person is a protected holder of a negotiable warehouse receipt if:

- (a) The receipt has been transferred to the person pursuant to article 15;
- (b) The person acted in good faith and without knowledge of any right or claim to the receipt or the goods covered by it, or of any defence on the part of any person other than the warehouse operator; and
- (c) The transfer was in the ordinary course of business or financing.

[2. A person does not have knowledge of a right or claim to a warehouse receipt or the goods covered by it for the purposes of paragraph 1, subparagraph (b), merely because information relating to that claim has been registered in [*the enacting State specifies the appropriate registry established pursuant to a secured transactions law*].]¹

3. If a negotiable warehouse receipt is issued by a warehouse operator to the order of a named person other than the depositor, the issuance of the receipt to that person by the warehouse operator has the same effect, for the purposes of determining whether that person is a protected holder, as if the receipt had been transferred to that person pursuant to article 15.

¹ This provision appears within square brackets as not all enacting States may have a registry for the registration of notices with respect to security rights of the type envisaged in chapter IV of the UNCITRAL Model Law on Secured Transactions.

Article 18. Rights of a protected holder of a negotiable warehouse receipt²

Option 1

1. A protected holder of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt, and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, free of any right, claim or defence of the warehouse operator or any other person, other than any right, claim or defence that arises under the terms of the receipt or under this Law.

Option 2

1. A protected holder of a negotiable warehouse receipt acquires:

(a) Ownership of the receipt and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt; and

(b) Such rights to the goods as it would acquire by the transfer of physical possession of the goods under other law, free of any claim or defence of the warehouse operator or any other person, other than any claim or defence that arises under the terms of the receipt or under this Law.

2. Paragraph 1 applies even if:

(a) The transfer to the protected holder or any prior transfer constituted a breach of duty by the transferor;

(b) A previous holder of the receipt lost control or possession of the receipt as a result of fraud, duress, theft, misappropriation, misrepresentation, mistake, accident or similar circumstances; or

² The enacting State may wish to choose the option that better reflects the nature of the rights acquired by the protected holder of a document of title in respect of the goods covered by the document in its domestic legal system.

(c) The goods or the receipt had previously been sold, transferred or encumbered to a third person.

3. The rights of a protected holder of a negotiable warehouse receipt under paragraph 1 are not subject to [*the enacting State specifies any retention-of-title, security or equivalent right*] that any person may have in or in relation to the goods covered by the receipt.

4. The rights of a protected holder of a negotiable warehouse receipt under paragraph 1 are not subject to any right pursuant to a judgment against any other person. The warehouse operator is not obliged to deliver the goods to a person claiming pursuant to such a judgment, unless the warehouse receipt is surrendered to the warehouse operator.

Article 19. Third-party effectiveness of a security right

A security right in a negotiable warehouse receipt may be made effective against third parties by:

(a) [Registration in a registry established pursuant to [*the enacting State specifies its secured transactions law providing for such registry*];]³

(b) In the case of an electronic negotiable warehouse receipt, the secured creditor taking control of the receipt; or

(c) In the case of a paper negotiable warehouse receipt, the secured creditor taking possession of the receipt.

Article 20. Representations by a transferor of a negotiable warehouse receipt

A transferor of a negotiable warehouse receipt represents to the transferee that:

(a) The receipt is authentic; and

³ This provision appears within square brackets as not all enacting States may have a registry for the registration of notices with respect to security rights of the type envisaged in chapter IV of the UNCITRAL Model Law on Secured Transactions.

(b) The transferor does not know of any fact that would impair the validity of the receipt, the value of the goods covered by the receipt, or the effectiveness of the transfer of the receipt and rights to the goods it covers, except as notified to the transferee.

Article 21. Limited representation by intermediaries

An intermediary that is known to be entrusted with a warehouse receipt on behalf of another person may exercise all rights arising out of the receipt but represents by the transfer of a negotiable warehouse receipt only that it is authorized to do so and does not make the representations referred to in article 20.

Article 22. Transferor not responsible for the warehouse operators' performance

A person who transfers a negotiable warehouse receipt does not guarantee, by virtue of the transfer, the performance by the warehouse operator of any obligations evidenced by the receipt.

CHAPTER IV. RIGHTS AND OBLIGATIONS OF THE WAREHOUSE OPERATOR

Article 23. Duty of care

1. The warehouse operator shall store and preserve the goods in accordance with the level of care expected of a diligent and competent warehouse operator storing goods of that type.

2. The warehouse receipt may contain limitations on and conditions to the obligations of the warehouse operator under this chapter, but any clause purporting to lower the duty of care in paragraph 1 or to exclude or limit the warehouse operator's liability for its fraud, wilful misconduct, gross negligence or misappropriation of the goods shall be null and void. The invalidity of such a clause shall not otherwise affect the validity of the warehouse receipt.

Article 24. Duty to keep goods separate

1. Subject to paragraph 2, the warehouse operator shall keep the goods covered by each receipt separate so as to permit identification of the goods at any time.
2. The warehouse operator may commingle fungible goods into a mass of goods of the same type and quality, to the extent permitted by the warehouse receipt.

Article 25. Lien of the warehouse operator

1. The warehouse operator has a lien on the goods in its possession and in any proceeds for:
 - (a) Charges for storage of the goods;
 - (b) Unexpected reasonable expenses necessary for the preservation of the goods;
 - (c) Reasonable expenses incurred in the sale of the goods in accordance with paragraph 4; and
 - (d) Similar charges or expenses owed by the holder in relation to other goods held by the warehouse operator, if so stated in the warehouse receipt.
2. Subject to paragraph 3, the warehouse operator's lien is effective against third parties.
3. As against a protected holder, the lien is limited to:
 - (a) Charges and expenses expressly stated in the warehouse receipt; or
 - (b) If no charges or expenses are so stated, a reasonable charge for storage after the date of issuance of the receipt.
4. The warehouse operator may enforce its lien pursuant to *[relevant other law as specified by the enacting State]*.

Article 26. Obligation of the warehouse operator to deliver

1. Except as provided in article 29, the warehouse operator shall deliver the goods to the holder, or a person nominated by the holder, if the holder:

- (a) Provides the warehouse operator with an instruction to deliver the goods;
- (b) Surrenders the warehouse receipt to the warehouse operator; and
- (c) Pays any outstanding amounts owed to the warehouse operator in respect of any of the charges or expenses referred to in article 25, paragraph 1, or, in the case of a protected holder, those referred to in article 25, paragraph 3.

2. Upon delivery of the goods, the warehouse operator shall cancel the warehouse receipt.

Article 27. Partial delivery

1. Except as provided in article 29, the warehouse operator shall deliver part of the goods to the holder, or a person nominated by the holder, if the holder:

- (a) Provides the warehouse operator with an instruction as to the delivery of the goods;
- (b) Surrenders the warehouse receipt to the warehouse operator; and
- (c) Pays a corresponding proportion of any outstanding amounts owed to the warehouse operator in respect of any of the charges or expenses referred to in article 25, paragraph 1, or, in the case of a protected holder, those referred to in article 25, paragraph 3.

2. Upon partial delivery of the goods, the warehouse operator shall note the partial delivery on the warehouse receipt and return the receipt to the holder.

Article 28. Split warehouse receipts

1. If requested by the holder of a warehouse receipt, a warehouse operator shall split the warehouse receipt into two or more warehouse receipts that cover the totality of the goods that were covered by the original warehouse receipt, upon surrender of the original warehouse receipt and payment of any additional cost reasonably incurred by the warehouse operator as a consequence of the split and reissuance of the warehouse receipt, unless the storage agreement provides otherwise.

2. Upon issuance of the split warehouse receipts, the warehouse operator shall cancel the original warehouse receipt.

Article 29. Exoneration from delivery obligation

The warehouse operator is relieved of its obligation to deliver the goods if and to the extent it establishes any of the following:

- (a) Destruction or loss of the goods for which the warehouse operator is not liable;
- (b) That it has sold or otherwise disposed of the goods in enforcement of its lien pursuant to article 25, paragraph 4, or to article 30; or
- (c) That it is prevented from doing so by court order or otherwise by circumstances beyond its control.

Article 30. Termination of storage by the warehouse operator

1. The warehouse operator, by giving notice to all persons known to the warehouse operator to claim an interest in the goods, may:

- (a) Demand payment of the amounts secured by its lien and removal of the goods by the end of the storage period specified in the warehouse receipt or, if the storage period has expired or no storage period is specified in the warehouse receipt, within a reasonable period [of not less than ... days [*the enacting State*

specifies a certain period]] after the warehouse operator gives notice, as specified in the notice; and

(b) Reserve the right, if the amounts are not paid and the goods not removed by the date or within the period specified in the notice, to then sell the goods in any commercially reasonable manner.

2. If the warehouse operator determines in good faith that, within the time provided in paragraph 1, subparagraph (a), the goods will deteriorate or decline in value to less than the amount secured by its lien, the warehouse operator may specify in the notice given under paragraph 1, subparagraph (a), any reasonably shorter time for removal of the goods and, if the goods are not removed, may sell them in accordance with paragraph 1, subparagraph (b).

3. If the warehouse operator does not know of any person claiming an interest in the goods, the notice required under this article may be given by public advertisement pursuant to *[relevant other law as specified by the enacting State]*.

4. If, as a result of a quality or condition of the goods about which the warehouse operator neither knew nor ought to have known at the time of deposit, the goods are a hazard, the warehouse operator may dispose of the goods in any lawful manner.

[CHAPTER V. PLEDGE BONDS]⁴

Article 31. Scope of provisions on pledge bonds

This chapter governs the effects of the pledge bond once transferred separately from the warehouse receipt.

⁴ This chapter is offered to States that wish to introduce or modernize a “dual” system of warehouse receipts consisting of two documents capable of being transferred separately. An enacting State that wishes to maintain or introduce a dual warehouse receipt system could enact this chapter either in its current form or integrated with the contents of the main body of the Model Law. The chapter appears within square brackets to enable States that wish to maintain or introduce a single warehouse receipt system not to incorporate chapter V in their legislation.

Article 32. Issuance and form of a pledge bond

1. The warehouse operator shall issue a pledge bond as a paper document signed by the warehouse operator that is associated with, but detachable from, the warehouse receipt, or as an electronic record capable of being controlled separately from the electronic warehouse receipt, which, once detached or subject to separate control:

(a) Represents the holder's right to payment of the amount stated in the pledge bond; and

(b) Grants the holder of the pledge bond a security right in the goods covered by the warehouse receipt.

2. The pledge bond shall identify itself as a pledge bond rather than as a warehouse receipt, but shall otherwise contain the same information as the warehouse receipt to which it relates.

3. "Holder" of a pledge bond means:

(a) In the case of a pledge bond that is issued to bearer or endorsed in blank, the person in control of the pledge bond:

(i) If the pledge bond is electronic, pursuant to a method used in accordance with article 6, paragraph 3; or

(ii) If the pledge bond is issued in paper form, by possession;

(b) In the case of a pledge bond that is issued to the order of a named person – that person, or the most recent endorsee, if in control of the pledge bond:

(i) If the pledge bond is electronic, pursuant to a method used in accordance with article 6, paragraph 3; or

(ii) If the pledge bond is issued in paper form, by possession.

4. Except for article 10, paragraph 1, subparagraph (a), articles 5 to 14 apply in relation to pledge bonds in the same way as they apply to warehouse receipts.

Article 33. Effect of a pledge bond

1. The rights of the holder of the warehouse receipt to goods are subject to the rights of the holder of the pledge bond.
2. The holder of the warehouse receipt may pay the amounts secured by the pledge bond to its holder whether or not the amount is yet due, in which case the holder of the pledge bond shall surrender the pledge bond to the holder of the warehouse receipt.
3. If there has been default in payment of the amount secured by a pledge bond, the holder of the pledge bond may enforce its security right over the goods pursuant to [*relevant other law as specified by the enacting State*].

Article 34. Transfers and other dealings

1. A pledge bond may be transferred together with the warehouse receipt, or separately. When transferred separately from the warehouse receipt, the pledge bond transfers the rights referred to in article 32, paragraph 1, subparagraphs (a) and (b).
2. The first holder of a pledge bond to transfer it separately from the warehouse receipt shall ensure that:
 - (a) The amount secured by the pledge bond and the due date for payment are inserted in the pledge bond; and
 - (b) Such information is transcribed into the warehouse receipt and a copy of the completed warehouse receipt is provided to the warehouse operator.
3. Articles 15 to 18 and 20 to 22 apply to pledge bonds in the same way as they apply to warehouse receipts.

Article 35. Rights and obligations of the warehouse operator

1. If the pledge bond has been transferred separately from the warehouse receipt, the warehouse operator shall only split the warehouse receipt in accordance with article 28 if requested by both the holder of the warehouse receipt and the holder of the pledge bond.
2. Prior to the due date for payment of the amount secured by the pledge bond, the warehouse operator shall only deliver all or part of the goods upon presentation of both the warehouse receipt and the pledge bond.
3. After the due date for payment of the amount secured by the pledge bond, the warehouse operator shall deliver the goods upon presentation of the pledge bond whether or not the warehouse receipt is also surrendered.

CHAPTER VI. APPLICATION OF THIS LAW**Article 36. Entry into force**

1. This Law enters into force [*on the date or according to a mechanism to be specified by the enacting State*].
2. This Law applies to warehouse receipts [and pledge bonds] that are issued after this Law enters into force.

Article 37. Repeal and amendment of other laws

1. [*The laws as specified by the enacting State*] are repealed.
2. [*The laws as specified by the enacting State*] are amended as follows [*the text of the relevant amendments to be specified by the enacting State*].

UNCITRAL-UNIDROIT MODEL LAW ON WAREHOUSE RECEIPTS GUIDE TO ENACTMENT

I. PURPOSE OF THE GUIDE TO ENACTMENT

1. The purpose of the Guide to Enactment is to provide comprehensive guidance on implementing the International Institute for the Unification of Private Law (UNIDROIT) and United Nations Commission on International Trade Law (UNCITRAL) Model Law on Warehouse Receipts (the “Model Law”) at the domestic level.¹ Accordingly, the Guide is composed of four parts. Parts I and II introduce the purpose of the Guide and the Model Law, respectively. Part III provides comprehensive commentary on the individual provisions of the Model Law, including their background, purpose and relationships with the general legal framework of a State enacting the Model Law (the “enacting State”). Part IV offers guidance on drafting the complementary legislation that may be required to implement the Law at the domestic level. Throughout, the Guide explains the relation of the Model Law to broader domestic legislation and to the relevant international legal framework, in particular the UNCITRAL Model Law on Secured Transactions² and the UNCITRAL Model Law on Electronic Transferable Records.³

2. The Guide is primarily addressed to legislative and executive branches of Governments that are considering introducing or reforming their legal framework for a warehouse

¹ *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 17 (A/79/17)*, annex I.

² *UNCITRAL Model Law on Secured Transactions* (United Nations publication, 2019).

³ *UNCITRAL Model Law on Electronic Transferable Records* (United Nations publication, 2018).

receipt system. Moreover, by providing explanations of the rationale and application of the provisions, it is a helpful source for users, including warehouse operators, depositors, holders of warehouse receipts and lenders, as well as judges, arbitrators, regulators and other relevant professionals. Lastly, the Guide can also be used as a tool by development institutions to support countries in legal reforms.

3. Several provisions of the Model Law, as well as the optional chapter V, on pledge bonds, indicate that an enacting State is required to make a decision or choose from among one of the options provided. Most of those options have been included in the Model Law to take account of structural differences of approach between different legal families and traditions concerning the design of a warehouse receipt system. The Guide explains the background and implications of such decisions or choices in order to assist enacting States in that respect.

4. Recognizing that the trend of legal reform is towards introducing a framework for electronic warehouse receipts, the Guide provides detailed information on how to implement a framework that supports and promotes the issuance and transfer of electronic warehouse receipts, irrespective of the technology or model used.

5. A first draft of the Guide was prepared by the UNIDROIT Working Group on a Model Law on Warehouse Receipts (the “UNIDROIT Working Group”) in collaboration with the secretariats of both UNIDROIT and UNCITRAL. The Guide was reviewed on the basis of the deliberations of the UNIDROIT Working Group, UNCITRAL Working Group I (Warehouse Receipts) and UNCITRAL.⁴

⁴ The reports of the UNIDROIT Working Group are available on the UNIDROIT website. The reports of the UNCITRAL Working Group and of UNCITRAL are available on the UNCITRAL website.

II. INTRODUCTION TO THE MODEL LAW

A. Background and drafting history

Background information

6. Warehouse receipts are electronic records or paper documents issued by warehouse operators that evidence property rights in stored goods and that may be traded or used as collateral to obtain credit.

7. The enactment of warehouse receipt legislation, in most cases as part of a system for regulating and overseeing the warehouse operators that issue warehouse receipts, has facilitated trade and finance. Furthermore, the use of warehouse receipts promotes the integrity and resilience of markets and the financial system and protects the interests of the parties to a trade or financing transaction. It does so through five main functions:

(a) Delivery of goods: the warehouse receipt grants its holder a right to delivery of the stored goods (subject to surrender of the warehouse receipt and payment of the operator's fees);

(b) Preservation: the warehouse operator has a duty to the holder to store and maintain or preserve the stored goods according to the standards and conditions specified in the receipt, as well as the statutory general duty of care;

(c) Valuation: the specification on the warehouse receipt of the type, weight and, if applicable, quality of the stored goods enables their valuation by financiers or trading counterparties, in most cases without the need for a physical inspection, and thus creates efficiencies, including in the case of large distances;

(d) Encumbrance: the warehouse receipt is a document of title that can be encumbered so as to secure an obligation to repay a loan or other extension of credit;

(e) Trade: the warehouse receipt can be transferred to a trading counterparty sight unseen to fulfil delivery obligations, without requiring the physical movement or

recertification of the goods, whether in a bilateral over-the-counter setting or through a commodity exchange.

8. Underpinning all five functions is a guarantee provided by the warehouse operator, as required by law, of the presence, condition and availability of the goods, backed by sufficient financial resources to provide compensation in the event of damage to them (e.g. through theft, fire, flood or other perils) or a breach of obligations by the operator (e.g. as a result of fraud, negligence or unexplained losses). Financial resources that stand behind the warehouse operator's guarantee typically include insurance, performance bonds and balance sheets, the latter being subject to minimum net worth requirements.

9. In developing countries, warehouse receipts have become increasingly salient as an instrument of financial inclusivity. Prevailing lending practices in the developing world usually place emphasis on tangible collateral such as real estate, motor vehicles and equipment. In practice, smaller-scale actors, including smallholder farmers, tend to lack this type of collateral and thus face barriers to accessing finance. However, smaller-scale actors do often have access to other movable assets – in particular, agricultural inputs and outputs – that may be stored in a warehouse, with the warehouse receipts being used as collateral for a loan.

10. The approach to legal reform in the area of warehouse receipts often involves the enactment of a warehouse receipt system law. This type of law is wider in scope than the Model Law and typically comprises both private and regulatory law. The Model Law focuses on private law aspects only, that is, those that define the rights and obligations of the parties to a warehouse receipt in a transactional context. Regulatory law, by contrast, would cover, *inter alia*, the following aspects:

(a) The mandate, powers and governance of the regulatory authority;

(b) Licensing criteria and procedures for warehouse operators (and sometimes also quality and weight certifiers and inspectors);

(c) Offences, penalties and disciplinary procedures.

11. Recognizing the important potential of warehouse receipts to strengthen the agricultural, industrial and financial systems of developing economies, several international development institutions, such as the United Nations Food and Agriculture Organization, the World Bank Group and the European Bank for Reconstruction and Development, have provided support for warehouse receipt systems, of which legal reform is often a key component.⁵

Consideration by the United Nations Commission on International Trade Law of the exploratory work on the topic

12. At its forty-ninth session, in 2016, the Commission decided to place the topic of warehouse receipt financing on its future work programme and agreed that it should be considered further after a colloquium or an expert group meeting.⁶ Accordingly, the UNCITRAL secretariat organized the Fourth International Colloquium on Secured Transactions (Vienna, 15–17 March 2017) to obtain the views and advice of experts with regard to possible future work on security interests and related topics, which included the topic of warehouse receipts.⁷

13. At its fiftieth session, in 2017, the Commission took note of the deliberations and conclusions of the Colloquium and decided that priority should be given to the preparation of a practice guide on secured transactions.⁸ With respect to the topic of warehouse receipts, the Commission decided to retain it on the future work agenda for further consideration.⁹ The

⁵ Several of these organizations have published guidance documents on legal reform, such as *Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends* (2015) by the United Nations Food and Agriculture Organization and the European Bank for Reconstruction and Development, as well as *A Guide to Warehouse Receipt Financing Reform: Legislative Reform* (2016) by the World Bank Group.

⁶ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 125.

⁷ The deliberations and conclusions of the Colloquium are summarized in documents A/CN.9/913 and A/CN.9/924.

⁸ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 227.

⁹ *Ibid.*, paras. 225 and 229.

Commission was informed that a delegation would prepare and submit a study on warehouse receipts for that purpose.

14. At the thirty-third session of Working Group VI (Security Interests) (New York, 30 April–4 May 2018), it was proposed that work should be undertaken to prepare a substantive text on warehouse receipts, and after discussion, the Working Group agreed to recommend to the Commission that it be mandated to undertake work on the topic.¹⁰

15. At its fifty-first session, in 2018, the Commission noted the proposal by Working Group VI relating to possible future work on warehouse receipts to develop a modern and predictable legal regime.¹¹ After consideration, the Commission concluded that more preparatory work on the topic of warehouse receipts was needed before it could decide on future steps and thus decided to request the secretariat to conduct exploratory and preparatory work on warehouse receipts in order to refer that work to a working group.¹²

16. At its fifty-second session, in 2019, the Commission took note with appreciation of a note by the Secretariat providing an overview of a study presented by the Kozolchyk National Law Center¹³ on possible future work on warehouse receipts (A/CN.9/992). The Commission noted the practical relevance of the project, given the importance of warehouse receipts to agriculture and food security, and their use in supply and value chains. The Commission confirmed its earlier decision to include the topic in its work programme but decided that it still needed to consider several important elements before embarking on the development of an international legal instrument on warehouse receipts.¹⁴ The Commission agreed to request the secretariat to proceed with its preparatory work

¹⁰ A/CN.9/938, paras. 92 and 93. The proposal is set out in the annex to the report of the Working Group.

¹¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), para. 249.

¹² *Ibid.*, para. 253 (a).

¹³ The Kozolchyk National Law Center is a non-profit research and educational institution.

¹⁴ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 195.

and to convene a colloquium with other organizations having relevant expertise, with a view to considering the questions of the scope and nature of the work discussed at that session and possibly advancing the preparation of initial draft materials.¹⁵

17. At its fifty-third session, the Commission had before it a note by the Secretariat on the progress made since the fifty-second session of the Commission (A/CN.9/1014). The Commission was informed that its secretariat had invited UNIDROIT to participate in and contribute to the preparatory phase of the Commission's work on warehouse receipts. The Commission was also informed that, in line with the mandate received from the Commission at its fifty-second session (see paragraph 16 above), UNIDROIT and the UNCITRAL secretariat had jointly organized and held a workshop with a broad audience of experts and organizations on 26 March 2020. Owing to the measures put in place by States and the United Nations in response to the coronavirus disease (COVID-19) pandemic, the workshop was eventually held in the form of a webinar by videoconference.

18. The Commission concurred with the assessment made by the secretariat and requested it to proceed with the necessary preparatory work towards the development of a model law on the private law aspects of warehouse receipts, covering both electronic and paper-based, and negotiable and non-negotiable, receipts. The Commission agreed to authorize such work to be started on a broad basis with the aim of preparing a comprehensive instrument covering all the essential private law aspects of warehouse receipt systems.¹⁶

19. With regard to the methodology, and bearing in mind the overall work programme of the Commission and the expected progress of the projects being dealt with by the various working groups at that time, the Commission agreed to carry out the project jointly with UNIDROIT, and noted with appreciation that the Governing Council of UNIDROIT had already authorized its secretariat to participate in such a project. The Commission also agreed with the proposal by the UNCITRAL secretariat for

¹⁵ Ibid., paras. 196 and 221 (b).

¹⁶ Ibid., *Seventy-fifth Session, Supplement No. 17* (A/75/17), part two, para. 60.

UNIDROIT to convene a working group set up under the auspices of its Governing Council, to which the secretariat would be invited in order to start the work. Once the UNIDROIT Working Group had completed its work, the preliminary draft model law would be submitted for intergovernmental negotiations through an UNCITRAL working group with a view to its ultimate adoption by UNCITRAL and UNIDROIT. The Commission further agreed that the final text to be adopted by UNCITRAL would bear the names of both organizations, in recognition of their close cooperation and the contribution by UNIDROIT during the preparatory and drafting phases of the project. In conclusion, the Commission requested its secretariat to proceed in cooperation with UNIDROIT with the preparatory work for the development of a model law on the private law aspects of warehouse receipts, as proposed in paragraphs 24–26 of the above-mentioned note by the Secretariat (A/CN.9/1014), and to present the results of that work to the Commission for consideration at its next session.

Consideration by the Commission of the preparatory work carried out by UNIDROIT and the secretariat

20. The Working Group on a Model Law on Warehouse Receipts convened by UNIDROIT in consultation with the UNCITRAL secretariat (the “UNIDROIT Working Group”) held six sessions between 2020 and 2023. The progress made in the first two sessions of the UNIDROIT Working Group was summarized in a note (A/CN.9/1066) that was considered by the Commission at its fifty-fourth session. The Commission noted with appreciation the progress made and agreed that the drafting of uniform provisions on the topic required a neutral and functional approach that respected differences in legal doctrines and practice among various legal systems.¹⁷

21. The progress made at the third and fourth sessions of the UNIDROIT Working Group was summarized in a note (A/CN.9/1102) considered by the Commission at its fifty-fifth session. The Commission noted with appreciation the progress made by the UNIDROIT Working Group and the estimated time

¹⁷ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 220.

for completion of the first phase of the project. The Commission noted the technical difficulty of formulating rules acceptable under different legal systems and the complex issues raised by negotiable documents, and stressed the importance for the UNIDROIT Working Group of adopting technological neutrality and functional equivalence as basic principles for its drafting effort.¹⁸

22. At its fifty-sixth session, the Commission considered the note by the secretariat summarizing the work done by the UNIDROIT Working Group at its fifth and sixth sessions and containing the draft model law as revised by the Drafting Committee following the sixth session of the UNIDROIT Working Group and the subsequent written consultation of the UNIDROIT Working Group (A/CN.9/1152). In addition, the Commission was informed that the UNIDROIT Governing Council, at its 102nd session (Rome, 10–12 May 2023), had agreed that the draft was ready for submission to UNCITRAL for State negotiations and completion.¹⁹

23. The Commission commended the UNIDROIT Working Group for the work accomplished since its establishment in 2020 and the UNIDROIT Governing Council for the approval of the draft model law on warehouse receipts. The Commission commended its secretariat and UNIDROIT for the work already accomplished, noting that it was the result of good and effective coordination and cooperation between UNCITRAL and UNIDROIT, which should continue throughout the preparation of a draft guide to enactment of the model law on warehouse receipts. While the Commission agreed that the current draft model law accommodated different legal traditions and dealt with the most essential issues for establishing an efficient and predictable regime for warehouse receipt operation and financing, it was observed that the draft model law did not contain rules on important issues such as loss sharing and the liability of warehouse operators, which the

¹⁸ Ibid., *Seventy-seventh Session, Supplement No. 17* (A/77/17), para. 197.

¹⁹ Ibid., *Seventy-eighth Session, Supplement No. 17* (A/78/17), para. 177.

UNCITRAL working group assigned the work on the draft model law might wish to include in its discussions.²⁰

24. After deliberation, the Commission agreed to refer the draft model law on warehouse receipts to Working Group I. In so doing, the Commission noted the advanced stage of the draft model law on warehouse receipts and its belief that consideration of the text by the Working Group would require only a short amount of time, possibly two sessions.²¹

25. At its fortieth session, Working Group I completed a first reading of the draft model law on warehouse receipts, discussing the scope of application of the model law and general provisions, the issuance and contents of a warehouse receipt, transfers and other dealings in negotiable warehouse receipts, the rights and obligations of the warehouse operator and pledge bonds. It also held a general discussion on warehouse receipts in electronic form (A/CN.9/1158).

26. At its forty-first session, Working Group I completed a second reading of the draft model law on the basis of a revised text (A/CN.9/WG.I/WP.133) and reviewed the draft guide to enactment of the model law (A/CN.9/WG.I/WP.134). At that session, Working Group I agreed to recommend to the Commission the adoption of the model law on warehouse receipts and its guide to enactment at its fifty-seventh session and requested the secretariat to make substantive and editorial amendments to both texts reflecting its deliberations.

27. The UNIDROIT Governing Council approved the model law at its 103rd session (Rome, 8–10 May 2024). At its fifty-seventh session (New York, 24 June–12 July 2024), UNCITRAL considered the revised text (A/CN.9/1182), a draft guide to enactment (A/CN.9/1183) and a compilation of comments submitted by States and international organizations (A/CN.9/1188 and A/CN.9/1188/Add.1). The Commission finalized the text and, on 26 June 2024, adopted the UNCITRAL-UNIDROIT Model Law on Warehouse Receipts

²⁰ Ibid.

²¹ Ibid., paras. 22 (b) and 177.

and approved in principle its Guide to Enactment.²² The General Assembly, in its resolution 79/118 of 4 December 2024, expressed its appreciation for the adoption of the Model Law and requested that it be published, together with a guide to its enactment.

B. Purpose of the Model Law

28. The purpose of the Model Law is to assist States in developing a modern warehouse receipts law that supports the issuance and transfer of electronic and paper-based receipts alike. The Model Law is intended to be useful both to States that do not currently have enabling warehouse receipts laws and to States that already have such laws but wish to modernize them – for instance, to support the use of electronic warehouse receipts.

29. The primary objective of the Model Law is to facilitate commercial transactions that involve stored goods. Although goods stored in warehouses may be transferred conveniently through the use of warehouse receipts, they may also be used as collateral. Thus, another objective of the Model Law is to promote short-term financing, in particular in the agricultural sector. By assisting States in developing well-designed warehouse receipt laws, the Model Law will facilitate access to credit and reduce the cost of financing for farmers. The standardization of rules relating to the issuance and transfer of warehouse receipts will improve confidence in warehouse receipt systems, which will in turn attract private sector investments in the agricultural sector.

30. In addition, the harmonization of warehouse receipt laws will aid the formation of regional and international markets. The legal framework will be particularly useful to developing countries.

31. Moreover, by improving the ability of farmers to grow and store crops and other agricultural products, the Model Law has the potential to increase global food production and assist in overcoming the challenge of food security. In that regard,

²² Ibid., *Seventy-ninth Session, Supplement No. 17 (A/79/17)*, paras. 24–78.

the Model Law has the potential to contribute to the achievement of Sustainable Development Goal 2 (End hunger, achieve food security and improved nutrition and promote sustainable agriculture).

C. Scope

32. The Model Law contains provisions relating to the private law aspects of warehouse receipt systems, that is, the issuance and transfer of warehouse receipts and the rights and obligations of the parties in a transactional context. It does not contain regulatory provisions such as those generally included in a warehouse receipt system law, for example, licensing, supervision and insurance requirements. The enactment of the Model Law should be accompanied by the issuance of a legislative instrument containing complementary rules further elaborated on in part IV.

33. It is important to note that the scope of the Model Law extends beyond agricultural commodities to other types of goods such as minerals, gas and oil. Article 1, paragraph 1, of the Model Law states that it applies to warehouse receipts, with no restriction on the type of goods that may be covered by such receipts. Furthermore, article 1, paragraph 2, provides a general definition of a warehouse receipt that does not include any condition that would limit its application to any particular sector. Thus, the Model Law can provide guidance on the enactment of both generic and commodity-specific legislation on warehouse receipts.

34. An important aspect of the Model Law is its applicability to both electronic and paper-based warehouse receipts. In recent years, many States have introduced electronic warehouse receipts as an alternative to their paper-based counterparts or are contemplating the enactment of legislation that provides for electronic warehouse receipts only. Electronic warehouse receipts improve trading efficiency and facilitate access to credit by removing the need for the physical transfer of receipts, thereby allowing for instantaneous, low-cost transactions. Moreover, commercial documents are nowadays seen as individual components of the

broader digital trade ecosystem. Therefore, a warehouse receipt may, for instance, incorporate information on the origin and quality of the commodity, such as the place of mining or the conditions of growing and harvesting, which may originate in other electronic documents, such as bills of lading or certificates of origin. In order for electronic warehouse receipts to be effective, however, it is essential that they and their paper-based counterparts have the same legal status and are treated equally in law. Article 1, paragraph 2, is important in that regard as it clarifies that a warehouse receipt may be either an electronic record or a paper document. Some jurisdictions have gone a step further and require several types of commercial documents, including warehouse receipts, to be issued electronically. This reflects a policy choice typically made after a careful assessment of the public and private sectors' readiness to transact exclusively electronically. The Model Law tacitly acknowledges the implications of such a choice and introduces no such requirement. A State that wishes to implement such a choice could easily do so by enacting the provisions dealing with electronic warehouse receipts and adapting some of the other provisions as appropriate.

35. The scope of the Model Law extends to both negotiable and non-negotiable warehouse receipts. The definitions of both are provided in article 2, paragraphs 4 and 5, respectively. While recognizing that non-negotiable warehouse receipts are widely used, emphasis is placed on negotiable warehouse receipts in view of the need to enhance legal certainty for holders of negotiable warehouse receipts. Moreover, non-negotiable warehouse receipts are often issued by collateral managers in the context of field warehousing arrangements that may not need to be subject to the same type of requirements applicable to the operators of public warehouses.

36. The scope of the Model Law also extends to both the transfer and security functions of negotiable warehouse receipts. Articles 15 to 18 deal with the transfer of electronic and paper-based negotiable warehouse receipts, as well as the effects of such transfers. The provisions, in particular those relating to transferees with protected holder status, are important for enhancing trading efficiency as they promote

confidence in the warehouse receipt system. Article 19 provides for the third-party effectiveness of security rights in warehouse receipts, which will facilitate access to credit. However, enacting States wishing to adopt a comprehensive legal framework for secured transactions, including for security rights in warehouse receipts, are encouraged to implement the UNCITRAL Model Law on Secured Transactions.

37. Lastly, the inclusion of the optional chapter V, on pledge bonds, enables the Model Law to be applied to both single and dual warehouse receipt systems. For States that wish to maintain or introduce a dual warehouse receipt system, chapter V should either be adopted in its current form or integrated with the contents of the main body of the Model Law. This type of system is more common in civil law countries, in particular those in South America, and involves the issuance of two separate documents relating to the property and security rights in the stored goods. In contrast, States that wish to maintain or introduce a single warehouse receipt system would not incorporate chapter V in their legislation.

D. Structure

38. The Model Law is organized into the following six chapters: (a) scope and general provisions; (b) issuance and contents of a warehouse receipt; replacement and change of medium; (c) transfers and other dealings in negotiable warehouse receipts; (d) rights and obligations of the warehouse operator; (e) pledge bonds; and (f) application of this Law.

39. Chapter I, entitled “Scope and general provisions”, sets out the scope of application of the Model Law, placing particular emphasis on its applicability to both electronic and paper-based warehouse receipts, and provides definitions of key terms used throughout the Model Law. Furthermore, the chapter contains provisions on non-derogation, as well as the interpretation of the Model Law taking into account its international origin and the need to promote uniformity in its application.

40. Chapter II is entitled “Issuance and contents of a warehouse receipt; replacement and change of medium”. It

deals with the issuance and contents of warehouse receipts, imposing an obligation on the warehouse operator to issue a warehouse receipt upon request by the depositor and enumerating the information that must be included in the warehouse receipt, as well as additional information that the warehouse operator may wish to include. It also deals with the replacement of warehouse receipts in the event of loss or destruction and the change of medium of a warehouse receipt from electronic to paper or vice versa.

41. Chapter III, entitled “Transfers and other dealings in negotiable warehouse receipts”, sets out the requirements for the transfer of both electronic and paper-based negotiable warehouse receipts. It then establishes the rights and benefits of transferees, including the additional rights of transferees with protected holder status, as well as the third-party effectiveness of security rights in negotiable warehouse receipts. Lastly, it contains provisions on representations and guarantees in the context of transfers.

42. Chapter IV sets out the rights and obligations of the warehouse operator, including the duty of care, the duty to keep goods separate and the obligation to fully or partially deliver goods upon instruction by the holder, as well as exonerations from that obligation. The chapter also contains provisions relating to the warehouse operator’s lien on stored goods, the possibility of splitting a warehouse receipt and the termination of storage by the warehouse operator. The rights and obligations of the warehouse operator set out in the chapter are limited to the extent required for the functioning of the Model Law.

43. Chapter V, on pledge bonds, is an optional chapter intended to be adopted only by enacting States seeking to reform or implement a dual warehouse receipt system. In a dual receipt system, the warehouse operator issues a warehouse receipt and a pledge bond. The pledge bond grants its holder a security right in the goods covered by the warehouse receipt, and the rights of the warehouse receipt holder are subject to the rights of the pledge bond holder. In a single receipt system, only a warehouse receipt is issued for the deposited goods. Chapter V deals with several matters

pertaining to pledge bonds, including their issuance and form, their effect and transfer, and the rights and obligations of the warehouse operator.

44. Chapter VI, entitled “Application of this Law”, contains provisions relating to the entry into force of the Law, as well as to the repeal and amendment of other laws in the enacting State.

E. Electronic warehouse receipts

45. The importance of electronic warehouse receipts in modern commercial practice is recognized by the Model Law and reflected in its drafting in a medium- and technology-neutral manner. In the first article of the Model Law, which delimits its scope of application, a warehouse receipt is defined as “an electronic record or paper document” fulfilling certain conditions (see article 1, paragraph 2).

46. The Model Law is medium-neutral. It applies to both electronic and paper-based warehouse receipts. Thus, the Model Law acknowledges the increasing relevance of electronic warehouse receipts in many jurisdictions where their use is already widespread in commercial transactions. Moreover, it provides guidance to legislators and regulators on how to adapt the legal and regulatory framework so as to facilitate the transition from paper-based to electronic warehouse receipts with enabling provisions. It does not preclude a State from implementing a system for electronic warehouse receipts only, which would not apply to paper-based receipts. In such cases, however, some changes in the law would be necessary, especially to eliminate the provisions that apply exclusively to paper-based receipts.

47. The Model Law is compatible with any model or system used for the issuance and transfer of electronic warehouse receipts, including registries and tokens. Approaches may vary within each category. For instance, registries may be single, centralized or multiple; general or sector-specific; and public or private. All the structural and organizational aspects should be addressed in complementary rules.

48. In implementing the Model Law and developing complementary rules, where necessary, legislators and regulators should be mindful of the risk of legal obsolescence in the face of rapid technological progress and seek to formulate solutions based on technology neutrality that are appreciated by the industry as market-sensitive and innovation-enabling.

49. The provisions of the Model Law that enable the use of electronic warehouse receipts – namely, articles 6 and 7 – are based on the corresponding provisions of the UNCITRAL Model Law on Electronic Transferable Records. This is to ensure that similar reliability standards would apply to different electronic documents exchanged in the same digital trade ecosystem – for instance, to an electronic bill of lading and to an electronic warehouse receipt relating to the same goods. The maintenance of similar reliability standards is of great importance to ensure system interoperability and, ultimately, the smooth flow of trade-related data.

50. The Model Law is a comprehensive legal text that offers a modern set of statutory provisions for warehouse receipts, whether in electronic or paper-based form. Alternative approaches are, however, possible. For instance, jurisdictions that have already adopted the UNCITRAL Model Law on Electronic Transferable Records and apply it to warehouse receipts may opt to continue to rely on it by enacting only those provisions of the UNCITRAL-UNIDROIT Model Law on Warehouse Receipts relating to the generic use of warehouse receipts or to the use of paper-based warehouse receipts, and not enacting those provisions that apply only to electronic warehouse receipts, such as articles 6 and 7.

F. Financing practices and products involving warehouse receipts

51. Warehouse receipt finance refers to any financial product and practice that enables the lender to rely on the underlying goods covered by a warehouse receipt as a source of repayment of a loan. Financing products such as the following

may rely on the warehouse receipt as sole security or on a package of assets that include warehouse receipts:

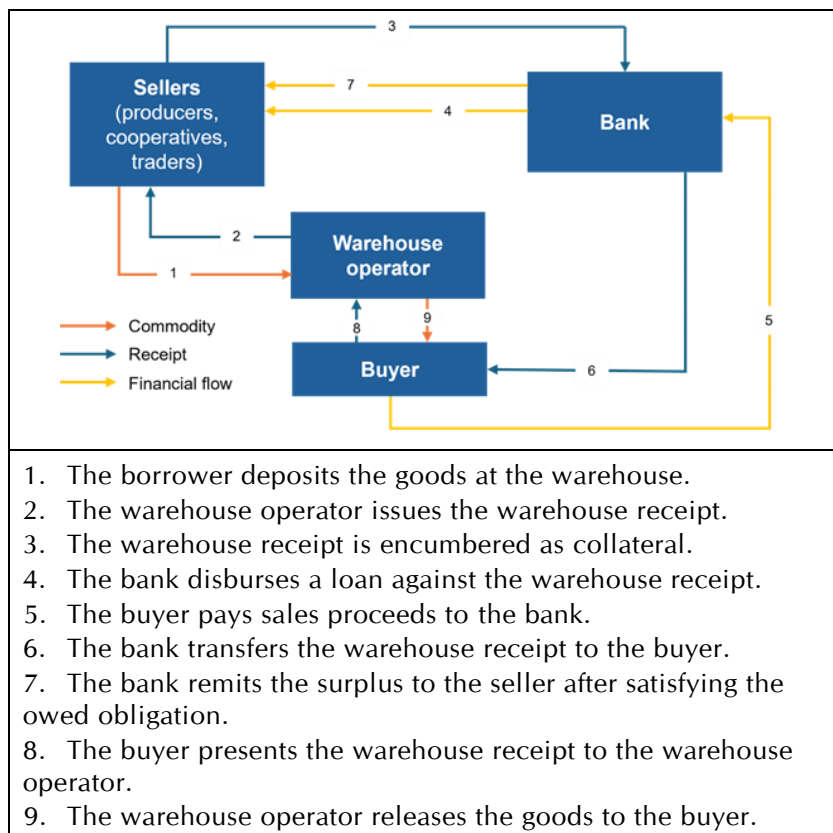
- (a) Warehouse receipt discounting: a depositor stores goods in a warehouse and receives a loan against a percentage of the value of the stored goods;
- (b) Supplier finance: a supplier takes a loan against goods stored in the buyer's warehouse;
- (c) Inventory finance: a buyer – for example, a trader that aggregates goods, an exporter that exports goods or an industrialist that processes or manufactures goods – takes a loan against goods stored in its own warehouse;
- (d) Warrantage: in parts of Africa, there are informal versions of warehouse receipt finance that are usually offered by microfinance institutions against community food stocks held in community-based storage under dual lock custody;
- (e) Commodity *murabaha*: in the Islamic world, warehouse receipts may be used to support shariah-compliant, interest-free banking products.

52. Prominent financial products and practices in which the warehouse receipt is just one of the assets include:

- (a) Trade finance, in which the encumbrance of the warehouse receipt to the lender may be paired with the assignment of the borrower's receivables, linked to a payment guarantee instrument (e.g. a letter of credit), among other potential risk mitigation mechanisms, to support a cross-border transaction;
- (b) Asset-based lending, in which the warehouse receipt is one of several movable assets that are encumbered, typically alongside inventory, receivables and a bank account;
- (c) All-assets lending, in which the lender lends against the entire pool of the borrower's assets, immovable as well as movable.

53. Notwithstanding all the possible variations, classic warehouse receipt finance, generally in the form of a

warehouse receipt discounting product, may be depicted as involving the following flows:



53. Looking beyond finance in the primary market, loans secured with warehouse receipts may be securitized and the resulting financial instruments traded in the capital markets. A more common transaction in the secondary market is a financing mechanism that relies on a central bank facility or other special, typically government-owned, financial institution that provides financing to the agricultural sector. One of the functions through which the facility supports agricultural activities is the extension of credit against loans secured with warehouse receipts to provide low-cost financing to the financial institutions that generated the loan. Under some regulations, loans secured with warehouse receipts may benefit from favourable prudential treatment.

54. On commodity derivative exchanges, warehouse receipts are typically classified as an eligible type of collateral. Electronic warehouse receipts may also be used to settle transactions on futures and other derivative exchanges. Should the seller's position on a physically deliverable commodity derivative instrument remain open until the delivery period, the seller may submit a warehouse receipt to the exchange, typically one issued by the operator of one of its designated delivery warehouses, which will then be transferred from the seller to the buyer to fulfil the settlement process.

55. For commodity spot exchanges, the warehouse receipt not only fulfils delivery functions in the settlement of exchange-traded contracts, as above, but is also required as a prerequisite for a seller to trade through the exchange, providing pre-trade assurance that the goods offered for sale are already in the warehouse, quality- and quantity-verified and guaranteed. In light of the above, some of the world's largest and most sophisticated warehouse receipt systems are operated by or in association with commodity exchanges.

56. When a warehouse receipt is used in a commercial transaction, whether against credit or in a trading position, the prospective purchaser or lender will consider the following range of risks:

(a) Legal risk: does the legal framework recognize warehouse receipts as documents of title and permit the efficient creation, perfection and enforcement of security rights?

(b) Custody risk: do the warehousing arrangements secure the presence and value of the stored assets?

(c) Credit risk: will the counterparty be willing and have the capacity to fulfil its obligations?

(d) Market risk: will there be a buyer willing to purchase the goods?

(e) Price risk: will the value of the goods be sufficient to fulfil obligations (if required)?

57. The Model Law, which is aimed at strengthening and harmonizing warehouse receipt laws around internationally agreed best practice, mitigates both legal risk and custody risk, and can thus contribute to increased worldwide adoption of warehouse receipt finance and, more broadly, the growing use of warehouse receipts in financing transactions to drive higher volumes of commodity trade and finance at lower risk and cost.

58. In mitigating both legal risk and custody risk, the Model Law is expected to be an enabler of cross-border trade and finance. Lenders may leverage an increasingly harmonized legal framework across jurisdictions to build cross-border warehouse receipt finance portfolios. Moreover, cross-border harmonization may accelerate the emergence of new commodity markets and associated clearing and settlement mechanisms by enabling buyers and sellers in different jurisdictions to benefit from a common and consistent legal foundation so that the legal framework, including the commodity exchange rulebook, can be applied without discrimination or differentiation based on the counterparty's domicile or the location of the stored goods. The formation of regional commodity markets may be of special benefit to small-scale economies that may otherwise struggle to build sufficient scale from the national market alone.

59. The Model Law contains a range of provisions that provide lenders with confidence that the enforcement rights in goods can be realized in practice, allowing them recourse in the event of non-performance by the borrower or the warehouse operator. Those provisions include giving the warehouse receipt the status of a document of title, standardizing the content of the warehouse receipt, setting out the rights and obligations of the parties to a warehouse receipt and specifying the modalities for the issuance and transfer of the warehouse receipt.

60. The mitigation of custody risk entails the lender evaluating the capacity of the warehouse operator to maintain the goods or to otherwise provide compensation for loss or damage that may occur while the goods are in storage. The Model Law incorporates a range of provisions that specify the obligations of the warehouse operator that issues the

warehouse receipt, including a duty to verify the quantity of goods described in the receipt and to take good care of those goods.

61. Lenders may privately contract with a collateral manager, which is a business that specializes in taking custody, controlling and preserving the condition of goods. That may take place through a tripartite agreement involving the lender, borrower and collateral manager known as a collateral management agreement. In general, the collateral management agreement involves a field warehousing arrangement in which the collateral manager takes control of the borrower's own warehouse. The warehouse receipts issued under such an arrangement tend to be non-negotiable.

62. Lenders may also utilize a warehouse receipt system, in which the regulatory aspects of warehouse receipt system law – not included in the Model Law (see part II, sections A and C, above) – typically define eligibility criteria for warehouse operators, including operational capability and capital adequacy. In practice, even under a warehouse receipt system, and especially when the system is nascent, lenders often wish to enter into a private agreement with the warehouse operator and work only with warehouse operators that meet the lender's eligibility criteria. The warehouse receipts issued under such arrangements tend to be negotiable.

63. In smaller economies, public warehousing has usually been established only in sites with particularly high throughflow, such as ports and the largest commercial centres. Such warehousing may be integrated into the operations of logistics, shipping and forwarding businesses, in which case it is not offered as a stand-alone service. In practice, it has been difficult to establish public warehousing outside those locations, in particular in rural areas close to farmers, who tend to be the weakest actors in the value chain with the highest unmet financing needs. Commodity exchanges may, in practice, be best positioned to establish public warehouses. However, in commodity exchange delivery warehouses, warehouse receipt finance may be available only to those parties also willing to trade through the exchange, which may be a limiting factor. In some countries, government agencies

such as commodity marketing boards also offer public warehousing.

64. Generally, however, efforts in smaller-scale economies to promote warehouse receipt finance outside the ports and commercial centres may be structured around private and field warehousing arrangements. Common examples include larger buyers offering storage services to their suppliers, and farmer organizations offering storage services to their farmer members. Warehouse operators offer these services as it helps to secure more supply than their own working capital and credit lines would allow. The depositor stores the goods and self-finances through warehouse receipt finance. When the buyer or the farmer organization has more cash flow later in the season, the goods are bought from the depositor. Experience shows that a lender may, in some circumstances, trust the buyer or farmer organization, as the warehouse operator, to issue the warehouse receipts, which the lender then finances. However, the lender may require an independent warehouse or collateral manager to control the goods and issue the warehouse receipts. The latter is always the case if the warehouse operator wishes to borrow using the same arrangement.

65. Because the warehouse operator's delivery obligation consists of an undertaking to make the goods available under certain conditions, that obligation might appear to apply to field warehousing where a collateral manager controls goods on behalf of a financier, issues a non-negotiable warehouse receipt as a record of the goods and then releases the goods to the borrower on the instruction of the financier. However, in such situations, the collateral manager would issue a non-negotiable receipt to which several provisions of the Model Law (e.g. on transfers) would not be applicable.

G. Private international law issues

66. The Model Law does not include an article that would determine the law applicable to various aspects of transactions with warehouse receipts, such as the proprietary effect of transfers. At its fifth session, the UNIDROIT Working Group

considered a note on conflict of law issues that examined various aspects of law applicable to warehouse receipts, their issuance, the rights and obligations of the issuer, transfers and security rights. The Working Group decided that a brief explanation of the relevant issues, without the formulation of any recommendations, would be included in the Guide to Enactment. The present section provides a summary of those issues.

67. Warehouse receipt laws do not typically include conflict of law rules. Transfers of warehouse receipts have traditionally been done domestically and completed by the delivery of a paper-based document. Thus, the general connecting factor of *lex rei sitae* is sufficient for such transactions. However, the digitalization of records and establishment of platforms for electronic warehouse receipts provide greater access to cross-border trading. Moreover, digitalization raises novel questions that the connecting factors determining the applicable law according to *lex rei sitae* may not be able to answer satisfactorily.

68. The mutual rights and obligations of a warehouse operator and the depositor are set out in the terms and conditions of their storage agreement. Those terms and conditions typically establish the governing law for disputes arising out of the storage agreement, as well as which courts have jurisdiction to adjudicate disputes.

69. Enacting States wishing to promote cross-border trading in warehouse receipts are advised to consider the various issues of private international law that may arise in connection with the circulation of warehouse receipts in different jurisdictions with a view to ascertaining whether their existing laws offer adequate rules for determining the relevant applicable law. Common issues would include the following:

- (a) The law applicable to the validity of the warehouse receipt;
- (b) The law applicable to the enforcement of a right of the holder against the warehouse operator;

(c) The law applicable to transfers of warehouse receipts, including whether a person satisfies the requirements to qualify as a protected holder;

(d) A conflict between the rights of a protected holder of the receipt and the rights of a person with an interest in the goods;

(e) The law applicable to the creation, third-party effectiveness, priority and enforcement of a security right in documents of title, including warehouse receipts (as provided in chapter VIII of the UNCITRAL Model Law on Secured Transactions).

III. ARTICLE-BY-ARTICLE COMMENTARY

Chapter I. Scope and general provisions

Article 1. Scope of application

70. Under article 1, the Model Law applies to warehouse receipts, either in the form of an electronic record or a paper-based document. This reflects the intention to design a medium-neutral instrument. Whatever form is chosen, only one warehouse receipt can be issued in respect of the same goods. The Model Law does not allow parties to issue concomitantly an electronic and a paper-based warehouse receipt covering the same goods, which could result in conflicting claims and losses for the holders of those receipts.

71. The Model Law does not specifically define an electronic warehouse receipt, which is simply a warehouse receipt issued as an electronic record. However, the Model Law does include, in its article 2, a definition of an electronic record based on the definition contained in article 2 of the UNCITRAL Model Law on Electronic Transferable Records. The concept of an electronic warehouse receipt is therefore based on the concept of an electronic record.

72. The Model Law does not apply to all electronic records or paper-based documents simply labelled as a “warehouse receipt”. Rather, it establishes two essential requirements for a

document to be considered a warehouse receipt for the purposes of the Model Law. This approach consolidates the definition of a warehouse receipt with the essential elements of a warehouse receipt into one comprehensive provision. An electronic record or paper-based document that does not meet the requirements of article 1, paragraph 2, may nonetheless have some legal effect under another law of the State, for instance as evidence of the information it contains, but would not be subject to the provisions of the Model Law. Article 10 lists the information that must be included in a warehouse receipt. However, the omission of such information would not disqualify the electronic record or paper-based document from being considered a warehouse receipt for the purposes of the Model Law (see paragraphs 98 to 100 below on the legal effect of omitting such information).

73. Under article 1, paragraph 2, the first requirement is that the warehouse receipt be issued and signed by a warehouse operator that acknowledges holding the goods covered by it on behalf of the holder (see article 2, paragraph 3, for the definition of a holder). This means that a warehouse operator must issue the warehouse receipt, identify itself as the party holding the goods on behalf of the holder and authenticate the document by adding its signature. The signed acknowledgement reflects the warehouse operator's duty to the holder to preserve the quantity and quality of the goods covered by the receipt (see article 23, on duty of care).

74. The second requirement is that the warehouse receipt must include a promise by the warehouse operator to deliver the goods to the holder. That is, in addition to safeguarding the goods, the warehouse operator must deliver them to the holder. The warehouse operator's delivery obligation is triggered when the holder surrenders possession or control of the warehouse receipt, instructs the warehouse operator to deliver the goods and pays any outstanding storage fee (see article 26, paragraph 1).

Article 2. Definitions

75. Article 2 provides definitions of key terms that supplement the general definition of a warehouse receipt in article 1.

Depositor

76. A depositor is defined in article 2, paragraph 1, as “a person who deposits goods for storage with a warehouse operator” and is a party to the storage agreement. The person depositing goods is not always the same as the holder; the Model Law makes this important distinction clear by providing separate definitions for a depositor and a holder. The identity of the depositor must be included in a warehouse receipt (see article 10, paragraph 1 (d)). The depositor may be a logistical company or an agent of a financial institution that takes the warehouse receipt as collateral.

Electronic record

77. The definition of an electronic record (see article 2, paragraph 2) draws on the UNCITRAL Model Law on Electronic Transferable Records in order to provide a foundational underpinning for electronic warehouse receipts (see article 1, paragraph 2).

Holder

78. The definition of a holder comprises separate subparagraphs outlining who qualifies as a holder for the purposes of negotiable warehouse receipts issued to bearer or endorsed in blank, negotiable warehouse receipts issued to the order of a named person, and non-negotiable warehouse receipts. The concept of a holder is one of the key concepts in the Model Law as it identifies the person who is entitled to delivery.

Negotiable warehouse receipt

79. Paragraph 4 defines a negotiable warehouse receipt as one issued to either the order of a named person or to bearer. A warehouse receipt that satisfies either of those conditions may be transferred by delivery or endorsement and delivery in the case of a paper-based warehouse receipt (see article 15,

paragraph 1), and by transfer of control in the case of an electronic warehouse receipt (see article 15, paragraph 2). Only a negotiable warehouse receipt may confer the status of a protected holder under article 17.

Non-negotiable warehouse receipt

80. The Model Law distinguishes a negotiable warehouse receipt from a non-negotiable warehouse receipt in that the former may be transferred by delivery, delivery and endorsement or transfer of control, whereas the latter may be transferred by assignment. This distinction is reflected in the definition of a non-negotiable warehouse receipt, which is “issued in favour of a named person only”. It follows from the definition of a negotiable warehouse receipt that, where a warehouse receipt is issued in favour of a named person whether or not qualified by the word “only”, but without the words “to the order” or equivalent, the warehouse receipt is non-negotiable. The warehouse receipt is also non-negotiable when it contains language prohibiting its transfer. The issuer should indicate clearly when a warehouse receipt is non-negotiable, for instance by using language prohibiting its transfer or equivalent formulations.

Protected holder

81. The definition of a protected holder refers to article 17, paragraph 1, which sets out the various requirements that must be met for a person to be considered a protected holder. A transferee and a secured creditor may satisfy those requirements and acquire the corresponding rights, including the highest protection against competing claims.

Storage agreement

82. Paragraph 7 provides a definition of a storage agreement, which is entered into between a warehouse operator and a depositor. Under paragraph 7, the storage agreement “sets out the terms on which the warehouse operator agrees to store goods”. The fact that the storage agreement sets out the terms under which the goods are to be held will be of primary interest to the holder of a warehouse receipt. The terms of the storage agreement may be contained in the warehouse receipt (see

article 9, on the incorporation of the storage agreement in the warehouse receipt). It should be noted, however, that although the Model Law assumes the existence of an underlying storage agreement, it does not deal with the storage agreement and obligations of the parties thereunder.

Warehouse operator

83. Paragraph 8 defines a warehouse operator as “a person who is in the business of storing goods for other persons”. A warehouse operator under this definition may be a person whose sole business is to provide storage for third parties or a person for whom such storage may be one of several services it provides.

Article 3. Non-derogation

84. Article 3 states that “The provisions of this Law may not be derogated from or varied by agreement”. Accordingly, all the provisions of the Model Law are mandatory. That does not mean that the parties would not be able to deal with other issues in a storage agreement or the warehouse receipt. Neither does it mean that an intermediary is prevented by article 21 from making additional representations or that a transferor is prevented by article 22 from guaranteeing the performance by the warehouse operator of its obligations.

Article 4. Interpretation

85. Article 4 is intended to provide guidance on the interpretation of the Model Law and to limit the extent to which the Law, once incorporated in national law, would be interpreted only by reference to concepts of national law.

86. The purpose of the reference to the international origin of the Model Law is to draw the attention of any person that might be called upon to interpret and apply a national law implementing the Model Law to the fact that its provisions, while part of a national law, should be interpreted and applied in a manner that will promote uniformity among all enacting States.

Chapter II. Issuance and contents of a warehouse receipt; replacement and change of medium

Article 5. Obligation to issue a warehouse receipt

87. Article 5 sets out the obligation of the warehouse operator to issue a warehouse receipt if so requested by the depositor. A warehouse receipt is typically issued in accordance with the underlying storage agreement. However, the Model Law does not make the issuance of a warehouse receipt mandatory in all cases and acknowledges the existence of different business models of goods storage, not all of which rely on the issuance of warehouse receipts. Rather, the Model Law gives the depositor the choice as to whether a warehouse receipt is to be issued or not. Depositors in practice choose warehouse operators for various reasons, including whether they issue warehouse receipts and, if so, under what conditions. The Model Law applies to warehouse receipts rather than storage agreements, and warehouse operators who offer to issue warehouse receipts would be obliged to issue those receipts, upon request by the depositor, subject to the conditions set forth in the storage agreement regarding, among other things, cost and liability for stored goods. Warehouse operators may also indicate in the terms of the storage agreement that they will not issue a warehouse receipt. Nevertheless, regulations may impose a separate obligation on licensed warehouse operators to issue a warehouse receipt (whether or not the depositor requests one) and penalties for violations.

88. Notably, the phrase “after receiving them for storage” covers not just situations where the warehouse operator has taken direct physical possession of the goods itself but also situations where the goods are being held on behalf of the warehouse operator, as may be the case with goods in transit.

Article 6. Electronic warehouse receipt

89. Article 6 sets out the requirements for issuing and using an electronic warehouse receipt under a medium-neutral approach. It is based on articles 10 and 11 of the UNICTRAL

Model Law on Electronic Transferable Records. The requirements are: (a) identification of the electronic warehouse receipt (as opposed to any other electronic record); (b) control of the electronic warehouse receipt during its entire life cycle; (c) retention of integrity of the electronic warehouse receipt; and (d) the use of reliable methods.

Article 7. General reliability standard for electronic warehouse receipts

90. Article 7 establishes the general reliability standard for electronic warehouse receipts, based on article 12 of the UNCITRAL Model Law on Electronic Transferable Records. Under article 7, the method referred to in article 6 must be as reliable as appropriate for the fulfilment of the function for which the method is being used, in light of all relevant circumstances. Article 7 sets out a non-exhaustive list of seven elements that are relevant for determining the reliability of the method used in managing electronic warehouse receipts. Regulators wishing to provide guidance on the reliability of electronic warehouse receipt management systems may do so on the basis of this article and with due regard for the desirability of preserving the application of the principle of technology neutrality. Article 7 does not prevent the enacting jurisdiction from adopting such mechanisms to assess the reliability of methods and systems before their use (an *ex ante* approach) or from establishing legal consequences to that assessment (e.g. legal presumptions). Moreover, the parties may agree on the reliability of the methods used in the electronic warehouse receipt management system. Such agreement may be contained in rulebooks that may be incorporated by reference in the storage agreement.

Article 8. Representations by the depositor

91. Article 8 deals with representations by the depositor at the time of deposit, which are contained in subparagraphs (a), (b) and (c). Those representations are made directly to the warehouse operator by operation of law, without the need for any additional formalities or declarations by the depositor, but

article 8 expressly extends their benefit to all subsequent holders. Nothing in this article requires the warehouse operator to verify any representations made by the depositor under this article.

92. Subparagraph (a) provides that the depositor represents to the warehouse operator and to subsequent holders that it has the authority to deposit the goods. The phrase “authority to deposit” covers not only situations where the depositor is the owner of the goods but also where, for example, the depositor is acting on behalf of the owner (as its agent).

93. Subparagraph (b) provides that the depositor represents that it has the authority to request the issuance of either a negotiable or non-negotiable warehouse receipt.

94. Lastly, subparagraph (c) provides that the depositor represents that to the best of its knowledge, the goods are free of any rights or claims of third parties except as notified to the warehouse operator. Subparagraph (c) effectively requires the depositor to disclose to the warehouse operator the existence of rights in the goods covered by the warehouse receipts held by a third party, such as a secured creditor, judgment creditor or tax authority, that the depositor is aware of at the time of the deposit. Although subparagraph (c) does not explicitly impose liability on the depositor in the event of misrepresentation about the existence of such rights, such liability may arise under other law.

95. Subparagraph (c) is to be read in conjunction with article 10, paragraph 1 (g), which requires warehouse operators to include in the warehouse receipt information about the existence of any rights of third parties to the goods notified by the depositor to the warehouse operator, and with paragraph 2. A warehouse operator would not be held liable for a missing, inaccurate or incorrect statement caused by a misrepresentation of the depositor.

Article 9. Incorporation of the storage agreement in the warehouse receipt

96. Article 9, paragraph 1, allows the warehouse operator, through an appropriate statement in the warehouse receipt, to incorporate by reference all or some of the terms of the storage agreement. The provision is aimed at ensuring that a potential holder is informed of some of the key obligations of the contract (e.g. limitation of liabilities) and will not repudiate them at a later stage. However, to protect subsequent holders and enhance confidence in the negotiation of warehouse receipts, paragraph 2 prevents the warehouse operator from relying on terms of the storage agreement that are inconsistent with the express terms of the warehouse receipt. In other words, a transferee takes the warehouse receipt subject to the terms of the storage agreement, as long as they do not conflict with an express term of the warehouse receipt. A warehouse operator is required to provide a copy of the storage agreement to potential transferees at the request of the current holder.

Article 10. Information to be included in a warehouse receipt

97. Article 10 lists the information that must be included in a warehouse receipt, clarifies the effect of any incomplete or incorrect statement of information and provides a rule addressing situations where a negotiable warehouse receipt does not list the name of the person to whose order it is issued. In the interest of legal certainty, paragraph 2 states that a failure to include any of the information listed in article 10 will not disqualify the electronic record or paper-based document from being considered a warehouse receipt for the purposes of the Model Law. It will be considered such as long as the requirements set out in article 1, paragraph 2, of the Model Law are met. However, missing, incomplete or incorrect information may render the issuer liable under other law.

98. Paragraph 1, subparagraphs (a) to (l), list the information that must be included in a warehouse receipt, beginning with the words “warehouse receipt” in subparagraph (a). The Model Law establishes several rules specific to transfers and other dealings in negotiable warehouse receipts (see chapter III

below). Moreover, the application of subparagraphs (b) and (c) depends on whether the warehouse receipt is negotiable or non-negotiable. A negotiable warehouse receipt, for instance, must include the name of the person to whose order the receipt is issued or a statement that it is issued to bearer (see subparagraph (b)). Subparagraphs (d) to (i) require the inclusion of the name and address of the depositor and the warehouse operator, a description of the goods and their quantity, and an indication of the existence of any rights of third parties to the goods notified by the depositor to the warehouse operator pursuant to article 8 (c), the fixed period of storage, if any, and the place where the goods are stored. This information reflects the terms and conditions of the storage agreement. The description of the goods and their quantity does not extend to verification of the quality of the goods, which is optional additional information (see article 11, paragraph 1 (c)). However, regulation may subject the licensing of warehouses to a demonstration of the operator's capacity to properly inspect and verify the quality of goods. Depending on the type of good, the maximum storage time and the fixed period of storage might not coincide, especially in the event of an extension of the deposit. Regulation may specify the maximum storage time for specific types of goods. Subparagraphs (j) to (l) require the warehouse receipt to contain a unique identifier and an indication of the date and place of issuance and the date of the storage agreement.

99. A warehouse receipt that is issued need not contain any of the information listed in paragraph 1 in order to qualify as a warehouse receipt, as long as it satisfies the essential elements of a warehouse receipt established in article 1 of the Model Law. The Model Law encourages the inclusion of this information to promote good practices. Under article 10, paragraph 2, a missing, incorrect or incomplete statement of information does not invalidate the warehouse receipt, which could negatively affect the rights of subsequent holders, but rather exposes the warehouse operator to liability for any losses proximately caused by such a statement. The degree of liability would be determined by some other law. The Model Law thus places the obligation on the warehouse operator, as

the issuer, to issue a warehouse receipt that contains correct and complete information.

100. To increase predictability, paragraph 3 addresses situations where a warehouse receipt does not include the information required under paragraph 1 (b) or (c), in which case it is presumed to be a negotiable warehouse receipt that is issued to bearer. The presumption of negotiability aims to promote the circulation of goods and access to credit and is rebuttable, as the actual clauses of the document should determine that document's nature. In practice, the rule may promote the design of electronic warehouse receipt management systems that require an explicit choice regarding negotiability.

Article 11. Additional information that may be included in a warehouse receipt

101. Article 11 lists additional information that may be included in a warehouse receipt, clarifies the effect of any incorrect statement of information (similarly to article 10, paragraph 2) and addresses situations where a warehouse receipt covers fungible goods but does not state the quality of the goods.

102. Paragraph 1 provides that a warehouse operator may include any other information in a warehouse receipt, including but not limited to the name of the insurer, if any, who has insured the goods, the details of the insurance policy covering the goods and the insured value (see subparagraph (a)); the amount of the storage fees if they are a fixed amount or, if they are not a fixed amount, how the fees are calculated (see subparagraph (b)); the quality of the goods (see subparagraph (c)); and, if the goods are fungible, whether the goods may be commingled (see subparagraph (d)). The concept of quality of the goods should be understood objectively. If applicable, the inclusion of such additional information is encouraged, but its omission does not expose the warehouse operator to any liability as in the case of omission of the information under article 10. Some additional information may be available only in electronic form and therefore cannot be

included in a paper-based warehouse receipt. Such information should be preserved in the event of a change of medium pursuant to article 14 of the Model Law.

103. Under paragraph 2, the effect of an incorrect statement of the information does not invalidate the warehouse receipt, but rather renders the warehouse operator liable for any losses caused by such a statement (similarly to article 10, paragraph 2). Notably, under article 10, the warehouse operator is not obliged to include any additional information. The warehouse operator can be held liable only in cases where additional information is provided and it states such information incorrectly.

104. To increase predictability, paragraph 3 provides that if a warehouse receipt covers fungible goods but does not state their quality, the goods are presumed to be of average quality.

Article 12. Goods in sealed packages and similar situations

105. Article 12 provides rules governing situations where the warehouse operator may not have a practicable or commercially reasonable means of describing the type, quantity and quality of the goods itself because they are sealed in packages or some other similar condition exists. The concept of practicable or commercially reasonable means should be interpreted as referring to good faith efforts to inspect the goods or otherwise verify the information in the light of commercial considerations, including damage to the goods and the cost of verification. However, regulation may set specific inspection standards for warehouse operators.

106. The warehouse operator may describe the goods in accordance with information provided to it by the depositor (see paragraph 1 (a)) or, in the case of goods in a sealed package, by a statement to the effect that the package is said to contain the described goods and that the warehouse operator otherwise has no knowledge of the contents or condition of the contents of the package (see paragraph 1 (b)). The warehouse operator should not make excessive use of this provision as otherwise, the warehouse receipt would have limited

commercial value, which could undermine its circulation and use in trade finance.

107. Paragraph 2 releases the warehouse operator from liability for any losses suffered by any person as a result of misdescription of the goods if the operator has described the goods in accordance with paragraph 1. However, liability for misdescription can be established if the warehouse operator is found to have known or have had reasonable grounds to believe that the description was incomplete or incorrect.

Article 13. Loss or destruction of a warehouse receipt

108. Article 13 governs the loss or destruction of a warehouse receipt by providing the holder with the right to request a replacement receipt and, if the operator refuses to issue one, to apply to the court for an order that the warehouse operator issue a replacement warehouse receipt. The Model Law defers to applicable domestic law on issues such as the provision of evidence of loss and the setting of a time frame for replacement, which may be specified in regulation. Moreover, the Model Law does not deal with the involvement of administrative or other authorities in the declaration of loss or destruction of the warehouse receipt or in the issuance of the replacement receipt, which could be required by regulation.

109. Paragraph 1 recognizes the well-established commercial practice of warehouse operators delivering the goods covered by a lost or destroyed warehouse receipt when they are satisfied that the purported holder is the person entitled under that receipt. Paragraph 1 lists the items that the purported holder must present to the warehouse operator in order to obtain a substitute warehouse receipt. They consist of adequate proof of the loss or destruction of the warehouse receipt, proof of the holder's entitlement to the warehouse receipt and indemnity in relation to the issuance of the replacement warehouse receipt (and security in support of that indemnity). Any warehouse operator that delivers the goods without a court order remains liable for the original negotiable warehouse receipt. To protect itself, the warehouse operator has the right to insist that the purported holder provide

indemnity. The indemnity should cover the full period for which the warehouse operator might be exposed to liability, which may be different from the period relevant for the statute of limitations. Moreover, the warehouse operator is entitled to the reimbursement of costs incurred for the replacement of the warehouse receipt, unless the storage agreement provides otherwise.

110. Paragraph 2 provides specific rules with respect to the loss of electronic warehouse receipts. Paper-based warehouse receipts are highly dependent upon the medium and, consequently, the destruction or loss of the medium inevitably entails the destruction or loss of the warehouse receipt itself. For electronic warehouse receipts, however, the ability to retain and exercise control is equally or even more important than the medium by which the relevant information about the receipt is recorded. This difference has interesting practical implications. Although they do not imply a substantial deviation from the general framework, provisions specific to electronic warehouse receipts assist in the interpretation and the application of substantive rules. Hence, article 13, paragraph 2, clarifies the meaning of loss or destruction of an electronic warehouse receipt and provides guidance on how to interpret and enforce the obligation of the warehouse operator to issue a replacement warehouse receipt at the request of the holder (at the time of the loss or destruction). In a registry-based model, even if the deletion of the entry related to the electronic warehouse receipt is theoretically possible, the effects of loss or destruction will be more frequently associated with the loss of control, the irretrievability or inaccessibility of the information, the lack of interoperability or system failures. Therefore, while the issuance of a replacement for a lost or destroyed paper-based warehouse receipt entails the production of an entirely new receipt in the chosen medium (electronic or paper-based in accordance with article 14), in the case of electronic warehouse receipts, it entails all actions directed at reinstating the control that has been lost.

111. Paragraph 3 provides a rule of a procedural nature governing application to the courts – or, depending on the

system, a regulatory body – for an order that the warehouse operator issue a replacement warehouse receipt if it declines to do so under paragraph 1. Paragraph 3 invites States to provide for “expeditious proceedings” with respect to such applications. The procedure to be followed will, in most cases, be provided in the enacting State’s rules on court or administrative proceedings.

112. Paragraph 4 governs the form of a replacement warehouse receipt to alert prospective transferees to the fact that an original might have been lost or destroyed. It provides that a replacement warehouse receipt must state that it is a replacement warehouse receipt. The replacement warehouse receipt cancels and supersedes the warehouse receipt believed to have been lost or destroyed.

113. Paragraph 5 provides that only the replacement warehouse receipt issued in accordance with paragraph 4 entitles the holder, or a person nominated by the holder, to claim delivery of the goods under article 26, but a person who, in good faith, acquires the warehouse receipt believed to have been lost or destroyed retains any right to claim damages from a previous holder that may be available under other law.

Article 14. Change of medium of a warehouse receipt

114. Article 14 entitles the receipt holder to request a change of medium of a warehouse receipt from paper to electronic or from electronic to paper. The change of medium from electronic to paper might be needed in less developed markets where some actors might not have access to the technology that was used to issue the receipt to the original holder. At the time of the change of medium, the warehouse operator has the duty to ensure that the replaced warehouse receipt becomes inoperative and ceases to have any effect or validity (see paragraph 2). In the case that the previous warehouse receipt was in electronic form, technological actions to delete the electronic warehouse receipt (or render it inaccessible), or to flag or tag it as unusable or replaced, should be carried out by the warehouse operator. Paragraph 3 clarifies that the change of medium has no legal effect on the rights and obligations of

the parties. In the event of a change of medium, the warehouse receipt maintains its legal effect from the time of its issuance in the first medium. It is therefore necessary to preserve all information recorded on the replaced medium and to maintain the integrity of the warehouse receipt on the replacing medium by reproducing necessary and optional information existing on the replaced medium. When dealing with storage and archival methods, regulators may wish to provide general guidance on this issue, bearing in mind other relevant law, if any (see, for example, article 19 of the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services), and related technical standards.

Chapter III. Transfers and other dealings in negotiable warehouse receipts

115. Chapter III deals with the transfer of negotiable warehouse receipts, rights of the transferee in general and of the protected holder, and related matters such as representations of the transferor. It does not address the assignment of rights under non-negotiable warehouse receipts, which is governed by other law.

Article 15. Transfer of a negotiable warehouse receipt

116. Article 15 sets out how a negotiable warehouse receipt may be transferred. It covers both electronic and paper-based warehouse receipts. The method of transferring negotiable warehouse receipts varies according to the manner in which the receipt is issued or endorsed. Article 15 covers negotiable warehouse receipts that are issued or endorsed to the order of a named person or to bearer, or endorsed in blank.

117. Paragraph 1 deals with the transfer of paper-based negotiable warehouse receipts. An endorsement is a signature on a document that facilitates its transfer. The requirements for endorsement recognized by domestic law for other types of instruments and documents, if any, could be made applicable to the endorsement of warehouse receipts, where appropriate. Article 15 refers to endorsement to the order of a named

person, to bearer or in blank (where no words are inserted other than the transferor's signature).

118. Paragraph 1 (a) and (b) apply to the first transfer of a paper-based negotiable warehouse receipt after its issuance, as well as subsequent transfers. Paragraph 1 (a) deals with situations in which a paper-based negotiable warehouse receipt is issued or endorsed to the order of a named person. A paper-based negotiable warehouse receipt is transferred by endorsement and delivery by the named person to the intended transferee. A negotiable warehouse receipt that is endorsed to a named person only (i.e. without the words "to the order" or equivalent) becomes a non-negotiable warehouse receipt. Paragraph 1 (b) deals with the transfer of paper-based negotiable warehouse receipts that are issued to bearer or endorsed in blank or to bearer. In such cases, the warehouse receipt is transferred by delivery and there is no need for any endorsement.

119. Paragraph 2 covers the transfer of electronic negotiable warehouse receipts. The rules governing these transfers are the same as those governing paper-based negotiable warehouse receipts, except that the requirement of delivery is replaced by the requirement of transfer of control. The Model Law does not allow the endorsement of an electronic warehouse receipt or recognize any effect of such endorsement.

Article 16. Rights of a transferee generally

120. The rights established under article 16 are twofold. Under paragraph 1 (a), a person to whom a negotiable warehouse receipt has been transferred obtains the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, and under paragraph 1 (b), obtains such rights to the receipt and the goods that the transferor was able to convey.

121. Under paragraph 1 (a), the warehouse operator's obligation to hold and deliver the goods depends on the terms of the warehouse receipt. Under article 8 of the Model Law, the terms of the warehouse receipt include all the terms of the storage agreement. The transferee will have recourse against

the warehouse operator if the warehouse operator breaches the terms of the warehouse receipt. It follows from this that if the warehouse operator has a lawful reason under the warehouse receipt for not delivering the goods, this would entitle the warehouse operator to withhold delivery from a transferee.

122. In application of paragraph 1 (b), the transferee's rights over the receipt and the goods depend on what rights the transferor was able to convey. If the transferor's rights over the receipt and the goods are curtailed in some way, for example if the transferor is not their true owner and has no authority to transfer the receipt and the goods, or if the transferor has granted a security right in the receipt and the goods to a third party, this will affect the rights that the transferee will obtain upon transfer of the receipt. In the former situation, the transferee will generally not obtain any property rights over the receipt or the goods. In the latter situation, the transferee's rights over the receipt and the goods will be subject to the prior security right. This effect is a consequence of the principle that a person cannot transfer a better right than that person has (*nemo dat quod non habet*). If the transferor of a warehouse receipt has ownership rights over the receipt and the goods, these rights will be passed on to the transferee, who will become the owner.

123. The rights of a protected holder are set out in article 18, which gives greater rights to a protected holder than article 16 gives to a transferee who is not a protected holder. Article 16, paragraph 2, states that article 16, paragraph 1, does not limit the rights of a protected holder under article 18.

Article 17. Protected holder of a negotiable warehouse receipt

124. Article 17 establishes who a protected holder of a negotiable warehouse receipt is. It should be read together with article 18, which establishes the rights of a protected holder.

125. Article 17, paragraph 1, sets out the three characteristics of a protected holder. Firstly, under paragraph 1 (a), the receipt must have been transferred to that person pursuant to article 15. As discussed above, such a transfer would be done by

endorsement and delivery, or by delivery alone, for paper-based receipts, and by transfer of control for electronic receipts. The second requirement, set out in paragraph 1 (b), is that the person must have acted in good faith and without knowledge of any right or claim to the receipt or the goods covered by it, or of any defence on the part of any person other than the warehouse operator. This second requirement is important, because the rights of the protected holder set out in article 18 give the holder immunity against such rights and claims, and it would be unfair if the protected holder knew about them at the time of the transfer. A protected holder would not be acting in good faith if the circumstances were such that a reasonable person in the position of the protected holder would have enquired further about the circumstances of the transaction, for example if goods were being sold for an amount substantially below their market price. The requirement of having no knowledge refers to actual knowledge rather than constructive knowledge. The third requirement, under paragraph 1 (c), is that the transfer must have been carried out in the ordinary course of business or financing. This provision covers the ordinary course of both the transferor's business and the transferee's business.

126. Article 17, paragraph 2, focuses on the question of what amounts to knowledge of a right or claim to a warehouse receipt or the goods covered by it, which is one of the components of article 17, paragraph 1 (b). This paragraph appears within square brackets, as not all enacting States may have a registry for the registration of notices with respect to security rights of the type envisaged in chapter IV of the UNCITRAL Model Law on Secured Transactions. In those States that have established such a registry, article 17, paragraph 2, would clarify that it should not be assumed that a person has knowledge of a claim merely because information relating to that claim has been registered in a secured transactions registry specified by the enacting State. This means that registration of a claim does not give constructive knowledge of the claim to someone with no actual knowledge of it.

127. Article 17, paragraph 3, addresses the situation where a warehouse receipt is issued to the order of someone who is not the depositor and makes it possible for this person to qualify as a protected holder. Although the first requirement for being a protected holder is not satisfied at face value because the receipt has not been “transferred” to that person, this is resolved by paragraph 3, which provides that the issuance of the warehouse receipt by the warehouse operator to a person who is not a depositor has the same effect as if the receipt had been transferred to that person pursuant to article 15. This provision is important to provide comfort to secured creditors who may require their customers to arrange for the issuance of such warehouse receipts to the order of the secured creditor.

Article 18. Rights of a protected holder of a negotiable warehouse receipt

128. Article 18 sets out the rights of a protected holder of a negotiable warehouse receipt. The Model Law advocates clarity with regard to the rights of holders, in particular protected holders. In legal systems where the protected holder becomes the owner of the goods covered by the warehouse receipt, an express legislative recognition of the holder’s ownership may further enhance legal certainty and confidence in warehouse receipt negotiation. Acknowledging, however, that there are systems that do not necessarily recognize such ownership rights, the Model Law offers two options. Legal systems that have not yet legislated in this area should select an option consistent with their property law principles.

129. *Option 1:* Under article 18, paragraph 1, a protected holder of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt. This is superior to the rights acquired by a non-protected holder, who will not acquire ownership of the goods if the transferor’s ability to transfer the goods was limited in some way, for example if the transferor was not the owner of the goods and did not have the authority to transfer them. The protected holder also acquires the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, free of any right,

claim or defence of the warehouse operator or any other person, even if the transferor would have been subject to such claims or defences. However, the rights of the protected holder are subject to rights, claims and defences that arise under the terms of the warehouse receipt or under the Model Law.

130. *Option 2:* Under article 18, paragraph 1, a protected holder of a negotiable warehouse receipt acquires the following rights free of any claim or defence of the warehouse operator or any other person, other than any claim or defence that arises under the terms of the receipt or under the Model Law: under subparagraph (a), the protected holder acquires ownership of the receipt and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt; under subparagraph (b), the protected holder acquires such rights, including property rights, to the goods as it would acquire by the transfer of physical possession of the goods under other law. Subparagraphs (a) and (b) make a distinction between the protected holder's rights over the receipt and the protected holder's rights over the goods. In some jurisdictions, the transfer of ownership of the goods with the warehouse receipt would expose the owner to loss of the goods if the depositor did not have title to the goods. Option 2 addresses this concern by achieving the effect that while the protected holder obtains ownership over the receipt upon its transfer, the protected holder may not necessarily acquire ownership of the goods, which would depend on the effect of the transfer of physical possession of the goods under other law.

131. Article 18, paragraph 2, emphasizes the high degree of protection accorded to the protected holder. It sets out specific circumstances that might ordinarily affect a transferee's rights and states that these do not affect the protected holder's property rights in the goods or its immunity from claims and defences. The situations covered in article 18, paragraph 2, are as follows: (a) where the transfer to the protected holder or any prior transfer constituted a breach of duty by the transferor; (b) where a previous holder of the receipt lost control or possession of the receipt as a result of fraud, duress, theft, conversion, misrepresentation, mistake, accident or similar

circumstances; or (c) where the goods or the receipt had been previously sold, transferred or encumbered to a third person. Article 18, paragraph 2, makes it clear that the specific events set out in that article will not negatively affect the rights of the protected holder under article 18, paragraph 1. This is not an exhaustive list. It does not mean that a claim or defence that is not referred to in article 18, paragraph 2, will necessarily affect a protected holder's rights. The protection given by article 18, paragraph 1, is broad enough to cover all claims and defences except those arising under the terms of the receipt or the Model Law. Furthermore, the Model Law does not affect any right of indemnity that may be available to the holder against the warehouse operator under other law.

132. Article 18, paragraph 3, addresses the situation where the goods covered by a negotiable warehouse receipt are subject to some encumbrance. A common example of this type of arrangement involves a seller of goods retaining title to the goods until they have been paid for. Another example might be where the goods have been subject to a security right before they are deposited in the warehouse. Such arrangements could result in a dispute between the seller with the right of retention of title or the person with the security right in the goods and the protected holder. Paragraph 3 states that the rights of a protected holder are not subject to any retention-of-title, security or equivalent right in or in relation to the goods covered by the receipt. Enacting States should insert appropriate terminology to cover the relevant domestic concept of security.

133. Article 18, paragraph 4, addresses the situation where a judgment has been made against a person and the question arises as to whether this judgment can be enforced against a warehouse receipt that is held by a protected holder. The paragraph makes it clear that the rights of a protected holder of a negotiable warehouse under article 18, paragraph 1, are not subject to any right pursuant to a judgment against any person other than the protected holder. This means that the protected holder's rights in the warehouse receipt will only be subject to a judgment made against the protected holder. In this situation, the warehouse operator will only be obliged to deliver the

goods to the judgment creditor if the warehouse receipt is surrendered to it.

Article 19. Third-party effectiveness of a security right

134. Article 19 is based on article 18 of the UNCITRAL Model Law on Secured Transactions, which sets out the primary methods for achieving third-party effectiveness. The function of article 19 is to encourage States to recognize the methods that a general secured transactions law should make available to achieve the third-party effectiveness of a security right in a warehouse receipt. The Model Law does not assume that every State has enacted a modern secured transactions law. It is not a function of a warehouse receipts law to provide a comprehensive set of rules for security rights in warehouse receipts. Rather, such a law should build on and ensure proper coordination with an existing secured transactions law.

135. Enacting States are encouraged to implement the UNCITRAL Model Law on Secured Transactions, which establishes several rules specific to security rights in negotiable documents, including with respect to creation (art. 16), third-party effectiveness (art. 26), priority (art. 49) and rights against the issuer of a negotiable document (art. 70). The general rules governing the registration of notices concerning security rights and the enforcement of security rights in tangible assets in the UNCITRAL Model Law on Secured Transactions apply to negotiable documents. Together, these rules provide a comprehensive framework for security rights in negotiable documents, including warehouse receipts.²³

136. Article 19 recognizes that three methods should be made available to parties to transactions where a warehouse receipt

²³ For more detailed guidance on the provisions that should be included in a secured transactions law to facilitate the use of warehouse receipts as collateral, the enacting State may refer to the notes prepared for the meetings of the UNIDROIT Working Group on a Model Law on Warehouse Receipts (Note on security rights in warehouse receipts (Study LXXXIII – W.G.4 – Doc. 5), and Note on inclusion of rules governing security rights in warehouse receipts in the Model Law (Study LXXXIII – W.G.5 – Doc. 4)), and to the travaux préparatoires of the Model Law by UNCITRAL and its Working Group I: A/CN.9/1152, A/CN.9/1158, A/CN.9/1165, A/CN.9/WG.I/WP.133, A/CN.9/WG.I/WP.134.

is used as collateral. These three methods are as follows: (a) registration in a registry established pursuant to an applicable secured transactions law; (b) taking control of an electronic warehouse receipt; and (c) taking possession of a paper-based warehouse receipt. The registration method appears in square brackets; a State should include it if it has established a registration system pursuant to its secured transactions law. Articles 18 and 26 of the UNCITRAL Model Law on Secured Transactions recognize registration and taking possession as the methods applicable to security rights in warehouse receipts. Article 19 encourages States to recognize control as a method of third-party effectiveness specific to electronic warehouse receipts.

137. It is important that enacting States with a modern secured transactions regime ensure functional equivalence between electronic and paper-based receipts used as collateral. This can be achieved by: (a) recognizing that “control” is the functional equivalent of possession; or (b) recognizing “control” as a separate method of third-party effectiveness. If the former approach is chosen, the legal effect of taking possession under the secured transactions law would apply equally to security rights in electronic warehouse receipts subject to the control of the secured creditor.²⁴ If the latter approach is chosen, enacting States should ensure that they have in place a priority rule comparable with that for paper-based warehouse receipts specified in article 49 of the UNCITRAL Model Law on Secured Transactions. That rule would provide that the security right of a secured creditor in control of an electronic warehouse receipt would have priority over another security right made effective against third parties by registration, subject to satisfying the conditions set out in article 49 of the UNCITRAL Model Law on Secured Transactions. Article 18, paragraph 3, of the UNCITRAL-UNIDROIT Model Law on Warehouse Receipts already provides a rule that enables the right of a protected holder of a warehouse receipt to prevail over a security right

²⁴ See the Explanatory Note in *UNCITRAL Model Law on Electronic Transferable Records* (United Nations publication, 2018), para. 114.

or other interest in the receipt or the goods covered thereunder.

138. The Model Law also includes an optional chapter V, on pledge bonds, to reflect the legislation in some jurisdictions under which the following two documents may be issued: (a) a certificate of deposit; and (b) a pledge instrument, which embodies the creditor's security right over the underlying goods. For the commentary on the articles of the Model Law that explain their incorporation in a warehouse receipts law, see chapter V below.

Article 20. Representations by a transferor of a negotiable warehouse receipt

139. Article 20 sets out the two main representations made by the transferor of a negotiable warehouse receipt to the transferee. The first representation is that the receipt is authentic, that is, it is genuine and not a forgery. The second representation is that the transferor does not know of any fact that would impair the validity of the receipt, the value of the goods covered by the receipt or the effectiveness of the transfer of the receipt and rights to the goods it covers, except as notified to the transferee. These representations are for the transferee's protection. The transferee will not acquire any rights in goods if the warehouse receipt is a forgery, and the transferee's position will be prejudiced if the second representation is incorrect. In such a case, the transferee can bring a personal action against the transferor for breach of the representation. The transferor will be liable for the breach of article 20 (a) if the receipt is not authentic, even if it was not actually aware of this. In contrast, under article 20 (b) the transferor will not be liable if it was unaware of any fact that impaired the validity of the receipt, the value of the goods or the effectiveness of the transfer.

Article 21. Limited representation by intermediaries

140. Article 21 addresses the situation where the transferor of a negotiable warehouse receipt is an intermediary who is holding the receipt on behalf of another person or has been

entrusted with the collection of a negotiable instrument or other claim, for example a collecting bank. The function of this article is to limit the application of article 20 so that an intermediary, such as a collecting bank, would not be liable for any breach of the representations referred to in article 20. Intermediaries, including collecting banks, may exercise all rights arising out of the receipt. This would include obtaining delivery of the goods. By transferring the receipt, the intermediary does not make the representations set out in article 20 but represents only that it is authorized to make the transfer.

Article 22. Transferor not responsible for the warehouse operators' performance

141. Article 22 makes it clear that a person who transfers a negotiable warehouse receipt does not guarantee, by virtue of the transfer, the performance by the warehouse operator of any obligations in relation to the receipt. This means, for instance, that the transferee cannot seek recourse against the transferor under the warehouse receipt if the warehouse operator fails to deliver the goods or has not stored the goods with care in accordance with the requirements of the Model Law or the storage contract.

Chapter IV. Rights and obligations of the warehouse operator

142. Chapter IV is aimed at enhancing confidence in warehouse receipts, rather than comprehensively regulating the rights and obligations of the parties to the storage agreement. Accordingly, the chapter does not contain a comprehensive list of all rights and obligations of the warehouse operator. Instead, it lists the key rights and obligations that increase confidence in warehouse receipts.

Article 23. Duty of care

143. Article 23 establishes the general obligation of the warehouse operator to store and preserve the goods received, which has a contractual basis. The standard of care required by article 23 is not absolute but is the level expected of a diligent

and competent warehouse operator storing goods of the same type covered by the warehouse receipt.

144. States have different tolerances for allowing parties to contract out of the obligation to provide the general standards of care under a storage agreement, with some not allowing it at all, others allowing it subject to compliance with an essential set of mandatory obligations under the duty of care, and others not allowing it but permitting limitations on the extent of liability if such a duty is breached. Paragraph 2 establishes limits on the operator's ability to vary its obligation under paragraph 1. Generally, paragraph 2 treats the duty of care provided for in paragraph 1 as a mandatory minimum standard that the warehouse operator is not allowed to exclude or lower. Neither may the operator exclude or limit its liability for fraud, wilful misconduct, gross negligence or misappropriation of the goods. The invalidity of a clause limiting liability does not, however, affect the validity of the warehouse receipt.

Article 24. Duty to keep goods separate

145. Article 24 stipulates the obligation of the warehouse operator to store the goods covered by each receipt separately. The obligation to store the goods is at the core of the storage agreement. In principle, the warehouse operator is at liberty to store deposited goods as best suits its operation, provided that this manner of storage falls within the bounds of any applicable standard of care. Alternatively, the parties may contractually stipulate that the deposited goods need to be stored in a particular manner. This article establishes a mandatory rule that the goods should be kept separately.

146. Article 24 is based on the understanding that not keeping the goods separately may affect the interests of third parties. In the preparation of the Model Law, it was pointed out that the difficulty in leaving exclusively to party autonomy the issue of whether to store the goods separately is that the manner in which goods are stored can have ramifications that go beyond individual contractual agreements and personal claims, also giving rise to property law disputes. Specifically, if deposited goods are commingled into a mass, in such a way that they are

no longer distinguishable, an even broader range of issues requires consideration. It is, *inter alia*, necessary to establish the respective property rights of each depositor in the commingled mass. Moreover, it is necessary to determine the proprietary rights, contractual claims and, possibly, restitution claims of each depositor in the event of a shortfall in commingled goods. The Model Law leaves these issues to be addressed by other law of the enacting State.

147. Article 24 imposes mandatory obligations on the warehouse operator regarding the manner in which goods must be stored but does not specify the consequence of breaching this obligation. The consequence is therefore to be determined in accordance with other law of the enacting State.

148. Paragraph 2 provides for an exception to paragraph 1 in the case of fungible goods. Paragraph 2 of this article allows goods of the same quality to be commingled, if this is stated in the warehouse receipt.

Article 25. Lien of the warehouse operator

149. Article 25 stipulates that the warehouse operator has a lien on the goods in its possession and in any proceeds. The lien is for the payment of outstanding sums related to the charges and expenses indicated in the article. The inclusion of the phrase “any proceeds” is intended to confirm that the lien would not be extinguished upon the goods no longer being in the warehouse operator’s possession. For example, the goods might be destroyed but insured, such that the warehouse operator would then be entitled to the insurance payout because its lien extended to that payout.

150. Article 25, paragraph 1, lists four kinds of charges or expenses against which a warehouse operator has a lien. According to article 11, paragraph 1 (b), the amount of the storage fees and the method used to calculate them are optional information that may be included in the warehouse receipt. The charges covered by article 25, paragraph 1, are therefore not necessarily stated in the warehouse receipt. This does not affect the establishment of a lien against the charges and expenses listed in article 25, paragraph 1 (a), (b) and (c),

and a lien can also be established against the charges and expenses listed in article 25, paragraph 1 (d), which are incurred under another storage agreement, as stated in the warehouse receipt. This provision is intended to make the holder aware of the existence of these charges.

151. The lien is effective against third parties, including any holder of the warehouse receipt. However, the Model Law does not intend to provide a priority regime for the warehouse operator's lien vis-à-vis third parties, as the relevant laws of the enacting State would govern that issue.

152. The protected holder is a special type of third party. To enforce a lien against a protected holder, the charges and expenses must be specified on the warehouse receipt or constitute a reasonable charge for storage after the date of issuance of the receipt. This "reasonable charge" refers only to the charges provided for in article 25, paragraph 1 (a).

153. Paragraph 4 requires the enacting State to specify the law according to which the warehouse operator may enforce its lien. The Model Law itself does not contain provisions on enforcement methods and requirements. The enacting State may specify the law either by incorporating enforcement provisions into the law enacting the Model Law, which would also apply to the warehouse operator's rights set out in article 30, or by referring to enforcement procedures under the applicable secured transactions laws and, where appropriate, extending those enforcement procedures to the types of non-consensual lien covered by article 25.

Article 26. Obligation of the warehouse operator to deliver

154. The obligation to deliver the deposited goods is a key element of any storage agreement. Article 26 makes it mandatory for the warehouse operator to deliver the goods to the holder or to another person nominated by the holder. The circumstances under which the warehouse operator is excused from performance of this obligation vis-à-vis a person who is entitled to delivery of the goods are listed in article 29.

155. The person entitled to delivery of the goods is the holder of the warehouse receipt, provided that that person meets the three requirements set out in article 26.

156. The warehouse operator must cancel the warehouse receipt upon delivery of the goods. If the warehouse receipt is not cancelled, the operator is liable to the holder of the warehouse receipt, even if the holder has obtained the warehouse receipt after delivery of the goods. There are no special provisions on how to cancel the warehouse receipt. In business practice, the usual method is to destroy the document or write the word “cancelled” on it in the case of a paper-based warehouse receipt, or to make it inoperable in the case of an electronic warehouse receipt.

Article 27. Partial delivery

157. Article 27 establishes a mandatory obligation for the warehouse operator to deliver part of the goods if so instructed by the holder of the warehouse receipt. Regulations may set the minimum quantity to be deposited with the warehouse operator or give flexibility to the warehouse operator in setting its own limits. If the amount of deposited goods falls below the minimum quantity, partial delivery may be refused.

158. Paragraph 1 lists three conditions for partial delivery. These conditions are the same as those stipulated in article 26, paragraph 1.

159. Paragraph 2 sets out the obligation of the warehouse operator to note the partial delivery on the warehouse receipt and return possession or control of the receipt to the holder.

Article 28. Split warehouse receipts

160. Article 28 imposes an obligation on the warehouse operator to split the warehouse receipt into two or more receipts that cover the totality of the stored goods covered by the original warehouse receipt if so requested by the holder. This is a mandatory obligation; the operator may not refuse a request by the holder to split the warehouse receipt, subject to the holder satisfying the conditions set out in paragraph 1,

including the payment of a fee where applicable. The warehouse operator may require, on the basis of commercial considerations, split warehouse receipts to respect the minimum quantity to be deposited. Depending on the nature and type of goods, the warehouse operator may be obliged to identify the goods corresponding to the split warehouse receipts.

161. The warehouse operator may only split the warehouse receipt if three conditions are met: it must be requested by the holder of the warehouse receipt; the original warehouse receipt must have been surrendered; and any additional cost reasonably incurred by the warehouse operator as a consequence of the split and reissuance of the warehouse receipt must have been paid, unless the question of costs is covered separately by the storage agreement.

162. Article 28, paragraph 2, requires the warehouse operator to cancel the original warehouse receipt. This obligation is similar to the one set out in article 26, paragraph 2. The cancellation of the original warehouse receipt and the issuance of split receipts do not affect any pre-existing rights, including security rights in the deposited goods, which would continue to apply to the entirety of the goods.

Article 29. Exoneration from delivery obligation

163. It is generally accepted that in some circumstances, the warehouse operator may be temporarily or permanently excused from delivering the goods. Article 29 sets out those circumstances. The term “relieved” does not imply that the warehouse operator may not be liable under other law.

164. Article 29 lists three circumstances under which the warehouse operator is excused from liability for failure to deliver or delay in delivery. Subparagraph (a) provides for the destruction or loss of the goods for which the warehouse operator is not liable. One example is where the warehouse operator fails to perform its obligation due to an impediment beyond its control, and the warehouse operator could not reasonably have been expected to have taken the impediment into account at the time of conclusion of the contract, or to

have avoided or overcome it or its consequences. Nevertheless, in many circumstances, the warehouse operator may be liable for loss or destruction of the goods, subject to exceptions that enacting States may determine in regulations. Subparagraph (a) should be read in conjunction with article 23, which deals with the duty of care of the warehouse operator. Subparagraph (b) should be read together with articles 25 and 30. As a natural consequence of enforcing the lien pursuant to article 25, paragraph 4, the warehouse operator is relieved of its obligation to deliver the goods. If the operator has sold or otherwise disposed of the goods pursuant to article 30, the storage agreement has been terminated and hence the warehouse operator is no longer under any obligation to deliver. The provision of subparagraph (b) merely clarifies and emphasizes that the warehouse operator is not liable in these circumstances. Subparagraph (c) refers to a court order or other circumstances beyond the control of the operator, for example if the goods have been confiscated.

165. The burden of proof is on the warehouse operator, who needs to establish the circumstances under which is it exonerated pursuant to article 29. Article 29 does not apply to cases of competing claims for delivery, in the event of which the warehouse operator should suspend delivery, if possible, until the competing claims are resolved. Delivery before resolution takes place at the warehouse operator's risk, and the warehouse operator may request indemnity from the recipient of the goods.

Article 30. Termination of storage by the warehouse operator

166. Article 30 provides that the warehouse operator has the right to terminate storage after giving notice. This may happen in the case of a storage agreement for an indefinite period that the warehouse operator chooses to terminate. This right may also be triggered in other situations, including the non-removal of goods upon expiry of the storage period. There is no provision in article 30 addressing the usual case where the holder of a warehouse receipt claims the goods but the operator refuses to deliver them. This situation should be dealt with in accordance with article 26.

167. Goods may be stored over an extended period of time. In principle, the duration of storage can either be fixed or indefinite. According to paragraph 1, an operator can terminate storage at the end of the storage period specified in the warehouse receipt. If no storage period is specified in the receipt, the warehouse operator can terminate storage within a reasonable time. This reasonable time must be not less than a given number of days after the warehouse operator has given notice, with the enacting State specifying that number. It is generally unproblematic for warehouse operators to organize their operation in such a way as to satisfy requests to deliver deposited goods at short notice. In contrast, it is generally arduous for holders to take delivery of goods at short notice, as they tend not to have the necessary facilities and must rely instead on third parties. Thus, unexpected requests to take delivery of deposited goods are likely to be extremely onerous for holders, possibly resulting in the sale of the deposited goods at submarket prices or even damage to or loss of the goods.

168. Paragraph 1 requires the warehouse operator to give notice before taking action; this notice must be given to all persons known to the warehouse operator to claim an interest in the goods. This raises the question of whether a warehouse operator necessarily knows who might have an interest in the goods. If not, then an issue arises regarding to whom the warehouse operator should give notice if it wishes to terminate storage. In some legal systems, the warehouse operator would, upon making the decision to terminate storage and sell off the goods, give notice of the intended sale only in a public medium, such as a newspaper. The requirement set out in paragraph 1 goes further than these legal systems, because it requires notice to be given to specific persons and not to the public at large. In an electronic system, the warehouse operator would at least know the identity of the last holder of the warehouse receipt. Therefore, the giving of notice specifically to claimants is less problematic in such systems. As a compromise, paragraph 3 allows for notice to be given “by public advertisement” if the warehouse operator does not know of any person claiming an interest in the goods. The public advertisement must be made

in accordance with the relevant law specified by the enacting State.

169. Paragraph 1 (b) sets out the consequences if a demand made by the warehouse operator in accordance with paragraph 1 (a) is not met. If the amount is not paid and the goods are not removed before the date indicated in paragraph 1 (a), the warehouse operator may sell the goods. The sale can be public or private, as determined by other law of the enacting State, and must be conducted in a commercially reasonable manner. A private sale is a sale that takes place directly between the seller and the buyer, while a public sale involves multiple potential buyers procuring the goods by way of auction or otherwise. The Model Law does not deal with matters such as the distribution of surplus generated after the enforcement of the lien and the procedural conditions for the sale of the goods, especially public sales, which are dealt with in other laws of the enacting State.

170. Paragraph 1 (a) leaves it to the enacting State to determine the reasonable period, which could be, for instance, 30 days. Paragraph 2 allows a warehouse operator who in good faith determines that within the time provided in paragraph 1 (a) the goods will deteriorate or decline in value to less than the amount secured by its lien to specify in the notice given under paragraph 1 (a) any reasonably shorter time for removal of the goods and, if the goods are not removed, sell them in accordance with paragraph 1 (b).

171. Lastly, paragraph 4 provides for termination of the storage of hazardous goods. The warehouse operator has the discretion to dispose of hazardous goods in any lawful manner, as such goods might require urgent disposal and a delay could increase the risk they pose. However, the warehouse operator may rely on this paragraph only if it was not aware, at the time the goods were deposited with it, that the goods were hazardous.

Chapter V. Pledge bonds

Introduction

172. There are generally two systems for warehouse receipts under domestic laws. Many countries adopt the “single” system, which provides for the issuance of warehouse receipts as a single document that can be used both for trading in the goods covered by the receipt and for obtaining financing secured by them. Several other countries, in particular those where the law does not allow a secured creditor to become the owner of the collateral in the event of default by the debtor, separate the two functions through the “dual” system, in which the warehouse receipt consists of two documents: a certificate of deposit that can be used to transfer rights in the goods (*récépissé d’entreposage*, *certificado de depósito*) and a pledge bond that grants the holder a security right in the goods for the amount stated in the bond (*warrant*, *bono de prenda*). The Model Law recognizes the existence of these two systems and offers chapter V, on pledge bonds, as an optional chapter for enacting States that wish to implement a dual warehouse receipt system and for States that already have such a system but wish to modernize it – for instance to support the use of electronic warehouse receipts.

173. Chapter V deals with several matters pertaining to pledge bonds, including their issuance and form, their effect and transfer and the rights and obligations of the warehouse operator. These provisions are presented separately from the rest of the Model Law in order to facilitate the use of the Model Law by States that do not wish to adopt a dual warehouse receipt system; however, States that do wish to implement such a system may consider integrating the content of this chapter with chapters I to IV of the Model Law.

174. The Model Law gives enacting States the choice between a single or dual warehouse receipt system. In the interests of clarity and legal certainty, the Model Law does not provide for a hybrid system allowing for the issuance of both single and dual warehouse receipts at the choice of the warehouse operator or the depositor.

Article 31. Scope of provisions on pledge bonds

175. Article 31 sets out the scope of the provisions contained in the optional chapter V. Under the dual system, the warehouse receipt and pledge bond are typically issued as one document capable of being separated into two at the choice of the holder, be it the original or a subsequent holder. The holder may, for instance, wish to retain the warehouse receipt – and therefore the ability to trade in the goods by transferring the warehouse receipt – and at the same time borrow money using those goods as collateral, in which case the holder would separate the pledge bond from the warehouse receipt and transfer the bond to the lender. In this way, the dual warehouse receipt system allows the separate circulation of goods and secured credit in commodity trade financing. The holder may instead prefer to retain both documents together and later transfer them to the new holder. In a dual system, both the warehouse receipt and pledge bond are typically transferable – together or separately – under the same conditions and by the same means as negotiable instruments. The provisions of the chapter will only have special application once the pledge bond is transferred separately from the warehouse receipt.

Article 32. Issuance and form of a pledge bond

176. Article 32, paragraph 1, which mirrors the structure of article 1, paragraph 2, describes the distinct function of a pledge bond under a dual system as a document that represents the holder's right to payment of a certain amount and grants to its holder a possessory security right in the goods covered by the warehouse receipt. Paragraph 1 reproduces the signature requirement contained in article 1, paragraph 2. Paragraph 1 also stresses the relationship between the pledge bond and the warehouse receipt by establishing the requirement for the pledge bond to be associated with, but detachable from, the warehouse receipt. The provisions on pledge bonds apply once the bond has been separated from the receipt.

177. In practice, a paper-based pledge bond is typically associated with, but detachable from, a warehouse receipt if both are issued as one paper-based (negotiable) instrument

with a perforated line in between so that they can be separated. An electronic pledge bond is associated with an electronic warehouse receipt by logically associating information or otherwise linking it together. In the case of an electronic warehouse receipt, the separation of the pledge bond is achieved if a method is used that makes it possible to control the pledge bond separately from the electronic warehouse receipt. Information relating to the electronic pledge bond does not have to be contained in a discrete electronic record. It may be contained in the same composite electronic record provided that separate control of the electronic warehouse receipt and of the electronic pledge bond is possible. The peculiar features of the electronic warehouse receipt may allay concerns related to the use of the dual system, as it may be possible to trace both the holder of the receipt and the holder of the bond despite them having been separated.

Signature and information requirements

178. Paragraph 2 establishes the requirement for both the warehouse receipt and the pledge bond to be “identified” as such, which is usually done by the inclusion in them of clear language to that effect. It should be noted that, whereas in a single system the designation of the document as a “warehouse receipt” is mandatory (see article 10, paragraph 1, and the accompanying commentary in paragraphs 98 and 99 above), in the case of a dual system it is indispensable to clearly identify both the warehouse receipt and the pledge bond for the purposes of transparency and legal certainty, as it serves to make the holder of the warehouse receipt aware of the separate circulation of the pledge bond and vice versa. Apart from that, however, the two documents must contain the same information, as they cover the same goods delivered for storage by the depositor.

Definition of a “holder” of a pledge bond

179. Paragraph 3 defines the concept of a “holder” of a pledge bond along the lines of the definition of a “holder” in article 2, paragraph 3. Existing methods for the issuance and transfer of warehouse receipts in electronic and paper form in a single system are also used in a dual system, as long as the warehouse

receipt and the pledge bond are capable of being independently controlled once transferred separately. In an electronic environment, this can be achieved, for instance, through the issuance of a warehouse receipt and a pledge bond as distinct digital tokens or through the creation of separate entries in electronic registries for each. In some systems, both documents are initially issued as paper-based documents and subsequently immobilized with a central custodian that subsequently keeps a registry of transfers and other transactions, including related information (such as the amount of the debt secured by the pledge bond).

Application of the rules on control and on the issuance and contents of warehouse receipts to pledge bonds

180. Paragraph 4 provides that articles 5 to 14 (with the exception of article 10, paragraph 1 (a)) apply to pledge bonds in the same way as they apply to warehouse receipts. Among them, articles 9 to 11 relate to the content of the warehouse receipt, and consequently the pledge bond. As a result of applying articles 10, paragraph 2, and 11, paragraph 2, to pledge bonds, any missing, incomplete or incorrect statement of mandatory information (as listed in article 10, paragraph 1) or incorrect additional information (as allowed by article 11, paragraph 1) on the pledge bond does not affect its validity. However, the warehouse operator is liable for any losses suffered by any person, most typically the holder of the pledge bond, as a result of any such missing, incomplete or incorrect statement. The rules on the scope and measurement of loss are left to the discretion of each enacting State.

Article 33. Effect of a pledge bond

Granting of a security right

181. The pledge bond confers to its holder a security right in the goods covered by the warehouse receipt that is created when the pledge bond is detached from the warehouse receipt. A necessary consequence of the function of the pledge bond as an instrument that embodies a security right is that the rights of the holder of the warehouse receipt are subject to the rights of the holder of the pledge bond. In other words, a person who

acquires rights in the goods by becoming the holder of the warehouse receipt acquires goods encumbered by the security rights held by the creditor under the pledge bond. This means that security rights created by pledge bonds are effective against holders, including subsequent holders, of the warehouse receipt. This principle is reflected in paragraph 1.

Termination of the security right by the holder of the warehouse receipt

182. The holder of the warehouse receipt may not necessarily be the debtor of the credit secured by the pledge bond, but it has an interest in terminating the security right in the goods covered by the pledge bond so that it can obtain the goods from the warehouse operator. Indeed, the holder of the warehouse receipt may wish to be able to trade in the goods free and unencumbered or claim their delivery from the warehouse operator. Both results are possible only after the security rights of the holder of the pledge bond are extinguished and the documents are reunited. For that purpose, paragraph 2 recognizes the right of the holder of the warehouse receipt to pay the amounts secured by the pledge bond to its holder (of which the holder of the warehouse receipt has knowledge through the statement required under article 34, paragraph 2 (b)), even if the amount is not yet due, and request the surrender of the pledge bond by the paid creditor. Depending on the design of the warehouse receipt system and whether or not it deals only with electronic receipts, some domestic laws expressly give the holder of the warehouse receipt the right to deposit the amount due either with the warehouse operator or the custodian of the pledge bond, who holds it in escrow to the benefit of the holder of the pledge bond, and thereby obtain the delivery of the goods.

Enforcement of the security right

183. Paragraph 3 provides for the right of the holder of the pledge bond to enforce its security right in the warehouse receipt and the goods it covers if the debt secured by the pledge bond is not paid by resorting to the remedies available under the laws of the enacting State that provide for the enforcement of security rights over movable assets.

Article 34. Transfers and other dealings

184. Until the warehouse receipt and the pledge bond are transferred separately, the decision to detach them from one another, to keep and transfer them together or to transfer only one of them rests entirely with the holder of the warehouse receipt. The holder may choose any of those options according to its business judgment and financing needs. Once separated, each document will transfer the rights it represents: the warehouse receipt will transfer rights to the goods, and the pledge bond will transfer a security right. Paragraph 1 stresses the import of each document by clarifying that the holder of a pledge bond acquires a security right but will neither directly nor by implication acquire ownership of the goods.

Separate transfer of warehouse receipts and pledge bonds

185. Paragraph 2 is an important provision for making any holders of the warehouse receipt and the pledge bond and the warehouse operator aware of the separate circulation of the two documents and of the amount of the debt secured by the pledge bond and the due date for payment. The transcription of such information into the warehouse receipt and the provision of a copy of the completed receipt to the warehouse operator are important requirements to enable the holder of the warehouse receipt to exercise its right to obtain the pledge bond in accordance with article 33, paragraph 2, and to claim delivery of the goods pursuant to article 35, paragraph 2. Furthermore, it is important for the warehouse operator to know the due date for payment as it will affect the conditions for delivery of the goods (see article 35, paragraphs 2 and 3). The amount need not be expressed as a fixed sum of money and may include an interest rate and other financial charges.

Application of the rules on the transfer of warehouse receipts to pledge bonds

186. Most provisions concerning transfers and other dealings in warehouse receipts under a single system would also apply to transfers and dealings in pledge bonds under a dual system. Accordingly, paragraph 3 determines the application of articles 15 to 18 and 20 to 22 to pledge bonds. Conversely, paragraph

3 does not provide for the application of article 19, on third-party effectiveness of a security right, to pledge bonds, since in the case of a pledge bond, third-party effectiveness derives automatically from article 32, paragraph 1, and does not require possession or control of the warehouse receipt. As the pledge bond is analogous to a negotiable instrument, the security right it represents becomes effective against third parties by the holder acquiring the pledge bond by endorsement and possession, or by endorsement and transfer of exclusive control if the pledge bond is in electronic form.

Article 35. Rights and obligations of the warehouse operator

Application of article 28 on split warehouse receipts

187. The holder of a warehouse receipt has the right, under article 28, to request the warehouse operator to split the warehouse receipt into two or more warehouse receipts that cover the totality of the goods that were covered by the original warehouse receipt. In order to avoid a detriment to the rights of the secured creditor holding the pledge bond, article 35, paragraph 1, clarifies that, where a pledge bond has been transferred separately from the warehouse receipt, the warehouse operator may only split the warehouse receipt when so instructed by both the holder of the warehouse receipt and the holder of the pledge bond. Where a warehouse receipt is split without the presentation of a pledge bond, this would have no effect on the security right of the holder of a pledge bond both in the warehouse receipt and the goods covered by it or on the delivery obligations of the warehouse operator pursuant to this article.

When the amount secured by the pledge bond is not yet due

188. In order to avoid a detriment to the rights of the secured creditor holding the pledge bond and also ensure that the holder of the warehouse receipt is not deprived of its rights without its consent, paragraph 2 permits the delivery of all or part of the goods by the warehouse operator only upon presentation of both the warehouse receipt and the pledge bond.

When the amount secured by the pledge bond is already due

189. However, if the debt secured by the pledge bond has matured and the secured obligation has not been satisfied by the due date, it is no longer necessary to present the warehouse receipt, and the unsatisfied creditor holding the pledge bond is entitled to enforce its security right by taking possession of the encumbered goods (see the commentary on article 33, paragraph 3, in paragraph 184 above). In such a case, article 35, paragraph 3, provides for delivery of the goods upon presentation of the pledge bond whether or not the warehouse receipt is also surrendered. The provision assumes that if the debtor was in default, the creditor should be able to foreclose on the security (the underlying goods) without any need to produce the warehouse receipt. The detached warehouse receipt no longer has value unless accompanied by a pledge bond.

190. Except for these special situations, most provisions concerning the rights and obligations of the warehouse operator under a single system, as set out in articles 23 to 30, would also apply to transfers and dealings in pledge bonds under a dual system.

Chapter VI. Application of this Law

Article 36. Entry into force

191. Article 36, paragraph 1, requires the enacting State to determine the date on which the new law will enter into force. If the enacting State so wishes, entry into force may be conditional on the establishment of a registration system (see article 107 of the UNCITRAL Model Law on Secured Transactions). In determining the date for the entry into force of the new law, careful consideration should be given to its implications for all relevant stakeholders. A certain period of time will be necessary to, inter alia, allow stakeholders to familiarize themselves with the new law and its implementing legislation and to prepare for compliance with the new rules.

192. Paragraph 2 provides that the Law applies only to those warehouse receipts (and, in case of a dual receipt system, pledge bonds) that are issued after its entry into force. Enacting States that are reforming a dual receipt system should incorporate the bracketed reference to pledge bonds in paragraph 2, whereas States not implementing the dual system should delete the reference in its entirety.

Article 37. Repeal and amendment of other laws

193. The Model Law provides a comprehensive private law framework for governing the issuance and transfer of warehouse receipts. Accordingly, paragraph 1 requires the enacting State to specify the laws to be repealed upon entry into force of the new law. The way in which the repeal is effectuated will depend on the form of the prior law and the legal system of the enacting State. If the prior law is set out in a separate statute or combination of statutes, it can be repealed in its entirety. If the prior law is contained in statutes that also address other topics, the enacting State must specify the provisions to be repealed and those to be retained or amended. If all or part of the prior law is based on judicial opinions (as may be the case, for example, in common law systems), the effect of the new warehouse receipts law will typically be to override the rules derived from the prior case law without the need for the enacting State to take any explicit repealing measures.

194. Warehouse receipts law interacts with many other laws, including laws on secured transactions, commercial contracts, civil procedure and enforcement, as well as the administrative law framework for warehouses more broadly. These other laws may contain provisions that refer to or are premised on the enacting State's prior law governing warehouse receipts. Accordingly, paragraph 2 provides for the enacting State to amend these provisions to the extent needed to align them with the new law.

195. Like the other articles of the Model Law, article 37 takes effect only when the new law enters into force pursuant to

article 36. Until that date, the provisions listed for repeal or amendment in this article remain in effect.

IV. COMPLEMENTARY LEGISLATION

A. Introduction

196. The Model Law covers the private law aspects of warehouse receipts, including the issuance and transfer of warehouse receipts and the rights and obligations of the parties. These factors are important for enabling commercial transactions involving stored goods and for facilitating access to finance through the use of warehouse receipts. However, in order for these provisions to be applied effectively, they may need to be complemented by legislation creating an institutional framework for regulating warehouses or creating a warehouse receipt system. The primary purpose of part IV is to provide guidance on the development of complementary rules to implement the provisions of the new warehouse receipts law effectively.

197. As such, this part goes beyond the scope of the Model Law to provide guidance on designing regulatory aspects of warehouse receipt systems, which do not directly implement the provisions of the Model Law. The decision was made to include such guidance in the Guide to Enactment because of the importance of these aspects for operationalizing warehouse receipt systems, which will reinforce the value of warehouse receipts. The suggested provisions in this part are therefore important for achieving the main objectives of the Model Law, as set out earlier in the Guide.²⁵

198. The remainder of this part is divided into three sections, on the licensing and supervision of warehouses, insurance, and a central registry of warehouse receipts. Each section contains suggested provisions for inclusion in the secondary legislation.

199. Section B, on licensing and supervision, elaborates on the importance of these regulatory processes, which give

²⁵ See part II.B. above.

confidence to all parties involved. It then sets out specific provisions that can be included in the relevant legislation in relation to the scope of the warehouse receipt system, the administration of warehouse licences, licensing periods, inspections and the suspension or revocation of licences. Lastly, it suggests several provisions for inclusion in secondary legislation relating to licensing requirements, inspection requirements, inspectors, and penalties and offences (including the suspension or revocation of licences).

200. Section C, on insurance, contains suggested provisions relating to the warehouse operator's obligation to take out an insurance policy that covers the stored goods. The suggested provisions pertain to the minimum coverage value and the events covered by such policies, the risk reduction measures to be implemented by warehouse operators, the scope of insurance coverage, the information to be included in the warehouse receipt in relation to insurance, and separately insured merchandise.

201. Section D, on a central registry of warehouse receipts, sets out several provisions relating to the registration of transactions involving warehouse receipts. The matters covered in this section include the types of transactions that can be registered; the establishment of a central registry; the duty or power to register transfers of warehouse receipts; functions, duties and features of the central registry; and its accessibility.

B. Licensing and supervision

202. Enacting States may wish to consider developing rules on the standards or requirements that warehouses and operators are required to meet. Such rules will specify, for example, the duty of care of the warehouse operator pursuant to article 23. Enacting States may thus allow the operation of a warehouse or participation in a warehouse receipt system only after issuance of the respective licence. Enacting States may decide whether to provide separate licences for the warehouse itself and the operator of a warehouse or a single licence for the operation of the warehouse.

203. An adequate licensing and inspection system for warehouses will enhance confidence in warehouse receipts. The following are some of the provisions that may be considered.

Scope and definitions

204. The enacting State may include in its legislation a definition of the warehouse, for example, the type of structure (e.g. a bag warehouse or silo), whether it includes vaults for precious metals or tanks for oils, or alternative storage facilities such as silo bags, and whether it may be public, private or both.

Administration

205. The enacting State should designate the competent authority for the licensing and supervision of warehouses and define its mandate and functions. The designated authority can be an existing regulatory body (e.g. the Ministry of Agriculture or the Securities and Exchange Commission) or, where no such body exists, one formed pursuant to the new legislation (e.g. a warehouse receipts council). An independent licensing and supervising authority provides confidence in the integrity of the warehouses.

206. The legislation governing the warehouse receipt system will also provide for the powers and functions of the designated licensing authority. These functions may include, among others, the issuance, suspension or revocation of licences and the establishment of a grading and weighing system for commodities.

Licensing requirements

207. The complementary rules should determine standard conditions for warehouses to be licensed, which may include the provisions contained in the following paragraphs. Upon the licensing requirements being met, a licence will be issued by the licensing authority.

Infrastructure requirements

208. The licensing authority may require the warehouse structure to meet certain conditions (e.g. be impervious to

moisture and rodents, and have secured access and appropriate equipment), or it may refer to relevant standards for the physical infrastructure if they are defined by another agency (e.g. the bureau of standards or the commodity sectoral regulator).

Qualified personnel

209. The legislation may require the employment of qualified personnel, such as warehouse managers, certified graders and weighers with integrity, to ensure that the staff employed has the expertise to meet the quality parameters, for example, through accurate weighing and quality grading, as this affects the value of the stored goods.

Warehouse operator requirements

210. The licensing authority may require the warehouse operator to meet certain conditions (e.g. legal registration, management capacity, financial resources and standard operating procedures). It may also require the warehouse operator to issue warehouse receipts even in cases where the depositor does not request one (see article 5).

Licensing period

211. The legislation may provide for a licence validity period that is annual or multi-year depending on the existing licensing practices.

Inspections

212. The legislation may provide for inspections of warehouses as a condition of granting a licence, to ensure transparency and the maintenance of standards in the storage industry. Inspections may be carried out not only during the licence application process but also to monitor compliance with the duties of operating a warehouse. These inspections can be scheduled or unannounced. Scheduled inspections can be undertaken regularly, while the frequency of unannounced

inspections may be left to the discretion of the competent authority.

Inspection requirements and inspectors

213. The legislation may establish the parameters of and the procedure for the inspections, for example, inspection of the goods in storage, storage records, accounts, equipment and the certificates showing calibration and maintenance schedules, in addition to the licensing requirements. The legislation should impose a duty on the warehouse operator to grant inspectors access to the warehouse and to relevant information, as well as a general duty to cooperate. The obstruction of inspectors may constitute an offence.

214. The legislation may provide for the appointment of inspectors to undertake inspections for the issuance of licences and to monitor the maintenance of quality standards during the validity of the licences for compliance purposes. The inspectors can be employees of the licensing authority or employees of private entities, as long as the latter are under the oversight of the licensing authority. The roles and functions of the inspectors should be clearly defined to ensure that the rights of the warehouse operator are protected and are not subject to abuse. The appointed inspectors may be required to identify themselves and to present authorization letters during inspections.

Suspension and revocation of licences

215. The legislation may also provide administrative procedures for the suspension and revocation of licences, including the giving of notice to the warehouse operator of the intention to suspend or revoke its licence. The administrative procedure may provide for a hearing for the warehouse operator before the suspension or revocation of the licence to enable the licensing authority to consider the prevailing circumstances that led to the infringement before taking appropriate measures. These measures may encompass the imposition of fines, remedial actions with a warning or other enforcement actions to protect the persons who have a legitimate interest in the goods stored in the warehouse.

Penalties and offences

216. The legislation may provide for the imposition of sanctions for infringements of the licence requirements. These sanctions may encompass the suspension or revocation of a licence. The nature and strength of the sanction should be proportionate to the severity of the infringement.

217. The conditions under which a licence may be revoked or suspended may include the following: failure to maintain the standards of the warehouse infrastructure; failure to preserve the quality of the goods in storage, and more broadly failure to fulfil the duty of care; failure to account for the deposited goods for which a warehouse receipt has been issued; criminal offences such as fraud and theft; and falsification of records.

C. Insurance

218. The enacting State may require the warehouse operator to procure mandatory insurance policies for the infrastructure and goods in storage, professional indemnity insurance or third-party liability insurance. The overall aim of requiring warehouse operators to insure the deposited goods is to protect the rights of depositors, creditors and holders while the goods are stored in the warehouse. The insurance should safeguard the holder's rights in case of warehouse insolvency or failure to deliver the stored goods. Insurance thereby provides security and strengthens the confidence of holders that they will receive their goods.

219. The Model Law does not require a warehouse operator to take out any insurance for the fulfilment of its obligations in relation to the goods stored in its warehouse. It merely states that the warehouse operator may include in the warehouse receipt the name of the insurer, if any, who has insured the goods (see article 11, paragraph 1 (a)).

220. However, the law governing warehouses often requires warehouse operators to take out insurance as a condition of receiving and maintaining a licence. The legislation governing the warehouse receipt system should establish the minimum

coverage value and a list of events that must be covered by the insurance policy.

221. The regulatory authority should consider the maturity of the particular market; it should not go beyond what is necessary to achieve its purpose to balance prudential and market development objectives. In the agricultural sector, in particular, there has been an increase in insurance premium rates in recent years due to the frequency of losses, natural events and the need for greater monitoring, among other factors. The regulatory authority should ensure that, in principle, the following aspects are addressed.

Minimum coverage value

222. The minimum coverage value is typically not specified in the legislation. Rather, its determination is delegated to the competent authority. The legislator may set a minimum value that the insurance must cover and empower the authority to deviate upwards from this value. This approach provides flexibility to the competent authority to adjust the amount over time. The legislation should then provide a minimum value that must be covered by the relevant insurance policy, which is usually equal to the maximum value of the goods stored in the warehouse at any given time.

223. It is essential to include in the complementary rules the warehouse operator's obligation to provide proof of the insurance to the depositor and the financier.

Minimum events covered by insurance

224. The legislation should also provide a list of events that must be covered by insurance policies taken out by warehouse operators. It is essential to cover liability for an event outside the operator's sphere of influence. For example, agricultural products may need to be covered against fire and standard perils. Insurance would usually include coverage of fire and standard perils; burglary and theft; fidelity cover (i.e. against employee fraud); and professional indemnity (i.e. against negligence). In some countries, separate coverage may be needed for civil unrest, political violence and terrorism.

225. The insurance policy must cover those events outlined in the relevant legislation, as well as any others agreed upon by the parties to an insurance contract. Alternatively, the insurance policy may provide coverage against “all risks” except for those specifically excluded. Such exclusions may relate to loss or damage caused by insects or vermin, extremes of temperature, wear and tear, rotting or mould, breakage, marring or scratching, criminal acts and acts of war. The minimum events set out in the legislation must not be excluded from the “all risks” coverage.

226. “All risks” policies provide more robust coverage for unforeseen events, which would reduce the risk of loss for depositors and any holders of warehouse receipts. They may, however, result in increased insurance premiums for warehouse operators due to the potential for unforeseen claims, which would, in turn, increase the cost of storage for the depositor. These factors should be taken into account by operators when negotiating an insurance contract.

Risk reduction measures

227. It is common for insurance companies to establish conditions for warehouse operators to obtain policies, including having security measures that reduce risk. As conditions may change, it is important to ensure regular review and update. Accordingly, it is recommended that a provision be included in the legislation that would require warehouse operators to develop policies and procedures on basic safety, prevention and protection, which must be reviewed at least once a year.

228. The warehouse’s policies and procedures on basic safety, prevention and protection should consider, at a minimum, the following factors:

(a) The physical security of the facilities where the goods are stored;

(b) The local alarm system for intrusions, fires or attacks on the warehouses or premises where the goods are located and, as the case may be, the sending of the

corresponding alerts to the alarm centre – this system must also have an electrical backup;

(c) The establishment and implementation of procedures to detect fraud or the theft of goods, taking into account the control of access to warehouses or premises;

(d) The supply of sufficient lighting in the periphery and manoeuvring areas of the warehouses or premises;

(e) The security and protection of movable and immovable property, computer systems and personnel.

229. The cost of warehouse insurance depends on the coverage chosen (facilities, contents or optional coverage), the size of the warehouse, its location (industrial park, urban area or rural area), the age of the building, the most recent renovations and the security measures in place (such as doors, sensors and alarms).

Scope of insurance coverage

230. The basic insurance coverage for warehouses includes coverage for the warehouse itself and its contents (i.e. goods). Considering a warehouse's contents, it is common for the insured goods to include merchandise, raw materials, products in process, finished products, machinery, furniture, tools, accessories and other equipment necessary for the operation of the insured's business. Accordingly, the legislation should include a provision that requires the types of assets covered by the relevant insurance policy to be described in the policy. This includes all goods owned by the insured or third parties in the warehouse operator's custody, for which they are legally responsible and that are located at the declared locations.

Separately insured merchandise

231. The legislation would not preclude depositors from taking out their own insurance to cover some or all risks during the period the goods are in storage or from storing the goods without insurance. In such cases, the storage fees would likely be lower. The legislation may determine the extent of the warehouse operator's liability under its duty of care should insurable risks materialize.

D. Central registry of warehouse receipts

232. There are no registry-specific provisions in the Model Law. However, an enacting State may develop additional rules for the establishment and maintenance of a registry to keep track of transactions involving warehouse receipts and warehouse receipts issued by warehouses in a central database. The warehouse receipts registry is different from the security rights registry envisaged in the UNCITRAL Model Law on Secured Transactions. However, the two registries may need to share information.

233. When drafting additional rules for registries, the enacting State may wish to strike a balance between achieving legal certainty and avoiding an approach that impedes or forestalls technological innovation. The Model Law is compatible with the use of any model, including registry-based and token-based systems. Various submodels can be devised within each category, be they single, centralized or multiple registries, general or sector-specific registries or public or private registries. In order to develop an appropriate legal framework, the following aspects may be taken into consideration.

Functions of the central registry and warehouse receipt transactions subject to registration

234. The functions of the central registry may include the registration of issued and transferred receipts. The enacting State may also establish rules regarding the evidentiary effect of the information contained in the registry.

235. The answer to the question of which warehouse receipt transactions should be registered depends on the type of warehouse receipts issued or used in the enacting State, the medium of those receipts (electronic or paper-based) and the existing legal framework. The transactions that can be registered are the issuance and transfer of receipts; the delivery of goods; the cancellation and surrender of receipts; the loss or destruction of receipts; and the replacement of receipts.

Institution designated to undertake registration

236. The legislation should establish where the registry is to be situated and which entity is to undertake the functions of the registrar. This could either be a public institution or a private entity under the supervision of a public authority.

Duty to register warehouse receipt transactions

237. The legal framework may impose a duty on warehouse operators to register relevant transactions in view of the fact that they are the ones who issue the receipts and have the necessary systems and personnel to do so, making the process easier and more efficient. However, certain transactions, such as transfers, may need to be registered by the parties to those transactions.

Duties and features of the central registry

238. The legislation may establish the duties and features of the central registry that would ensure its efficiency and integrity in managing warehouse receipt transactions. Such duties should include:

(a) The maintenance of an audit trail of the relevant warehouse receipt transactions to ensure a comprehensive record of all transfers for an appropriate period of time after the warehouse receipt no longer covers goods;

(b) Security and risk management parameters to ensure the integrity of receipts and transactions, including the performance of pre-checks before a transfer is recorded;

(c) The generation of reports on warehouse receipt transactions;

(d) The capacity to handle warehouse receipts issued either electronically or in paper format or both;

(e) The ability to provide authorized parties with access to its records.

Accessibility of the central registry

239. In addition to parties to warehouse receipt transactions, the central registry could be accessible to authorized parties such as potential buyers and financial institutions to conduct

due diligence on the status of the warehouse receipts. Registry access facilitates faster, more efficient and transparent transfers and access to credit. The legal framework may set out who these parties are and the access rights they hold to ensure the confidentiality and security of warehouse receipts.

