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WHITE PAPER

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I. INTRODUCTION

1. One of the key objectives of the activities undertaken by UNIDROIT in relation to the celebration of its Centenary in 2026 is to conduct a comprehensive analysis of the Institute's work to date, critically looking at past achievements and suggesting recommendations for the future. To this end, UNIDROIT established seven thematic Workstreams tasked with preparing White Papers in their respective areas. Each White Paper is expected to include: (i) an analysis and a critical assessment of the work conducted by UNIDROIT to date; (ii) a consideration of the current state of play; and (iii) a strategy for future work, including recommendations.

2. The Access to Credit Committee (ATC Committee) is asked to consider and assess UNIDROIT's past, current, and future work in relation to access to credit. Access to credit, previously referred to as "secured transactions", is one of UNIDROIT's most prolific and successful fields of legislative activity. UNIDROIT's work in this field spans four decades and has resulted in 12 adopted instruments, including both hard law treaties (conventions and protocols) and soft law instruments (model laws and guides to enactment). These instruments cover a range of financing methods and products used by different parties across a variety of sectors, from financing high-value equipment to facilitating access to credit for small and medium-sized enterprises and agricultural producers. A primary objective of harmonising access to credit law is to increase the availability of credit and lower its cost. Over centuries of development, attempts have been made in a variety of ways to achieve this primary economic goal, with varying degrees of success. The last few decades have witnessed a significant movement toward modernisation and harmonisation of laws that provide the legal infrastructure for credit transactions. Some of those efforts are narrowly focused (relating to a particular model of finance or particular assets) while others have a broader reach. UNIDROIT has played a major role in both types of these developments, along with its sister organisations. The most effective legal reforms are based on the understanding that effective and efficient legal rules can reduce the risk of loss on the part of the creditor, thus (i) enabling credit transactions to take place that would otherwise not be feasible, and (ii) lowering the cost of credit in transactions that would otherwise go forward only at a higher cost. Legal structures that reflect this understanding and effectuate it by methods that respect the legitimate needs of all parties to a transaction, as well as the interests of third parties whose rights may be affected by a transaction, form a key component of increasing access to credit. This paper describes and assesses the role of UNIDROIT instruments in achieving these goals.

II. EVOLUTION OF ACCESS TO CREDIT

A. Key developments in access to credit

3. Over recent decades, access to credit has been reshaped by the modernisation of secured transactions law: the shift from formalistic, possession-based security to a functional, registration-based approach that treats rights securing payment alike and affords creditors predictable priority and enforcement. By reducing credit risk and cost, this lowers barriers for buyers, lessees and — in particular — micro, small and medium-sized enterprises. Two parallel forces define the current landscape: the internationalisation of asset finance (high-value mobile equipment and cross-border receivables) and the drive for financial inclusion in emerging markets, increasingly enabled by digitisation through electronic registries, e-invoices, electronic warehouse receipts and platform-based finance. UNIDROIT instruments have both reflected and accelerated these developments.

B. The role of hard law and soft law

4. UNIDROIT's contribution spans two instrument types, which call for different analysis and different evidence of influence:

- Hard law — conventions and their protocols (the Cape Town Convention and its Protocols; the Leasing and Factoring Conventions). These are binding, and their reach is visible through signatures, ratifications and accessions, entry into force and, where applicable, registry activity. Yet these formal metrics can understate influence: an instrument may shape law and practice in non-Contracting States, attract industry support, and generate authoritative commentary and case law.

- Soft law — model laws, guides to enactment and legal guides (the Model Law on Leasing; the Model Law on Factoring and its Guide; the Model Law on Warehouse Receipts; and the forthcoming guides on agricultural financing and crowdfunding). These have no ratification record; thus, their effect must be inferred from the consistency of national laws with the instrument — including partial or principle-level alignment — and from academic and institutional engagement. Data is correspondingly harder to obtain.

5. For both categories, the more informative measure is the degree of influence achieved, rather than formal accession alone.

C. Measuring influence: a graduated approach

6. Each instrument's influence can be assessed against a graduated scale that captures the depth of uptake in a given jurisdiction — from no discernible influence, through academic engagement and indirect (doctrinal or case-law) influence, to partial alignment, strong conformity and full adoption.

Degree of influence	Typical indicators (drawn from the per-jurisdiction notes)
None / baseline	No national law based on the instrument and no recorded engagement.
Academic engagement	Academic debate, scholarly review or legal education referencing the instrument.
Indirect / soft influence	Case law; doctrinal participation; seminars; shared principles (e.g. UCC-type rules); partial or regulatory uptake.
Partial alignment	Laws adopting similar principles; participation in drafting; stated intention to adopt.
Strong conformity	National law conforms to the instrument, or the instrument is used as a benchmark / best-practice reference.
Full adoption	National law entirely or largely based on the instrument; or, for hard law, ratification / accession.

7. In analysing each instrument the Committee may wish to weigh: (i) the extent to which States' laws are consistent — or inconsistent — with the instrument; (ii) its relationship with other UNIDROIT and related instruments (for example, the relationship between the Model Law on Factoring and the UNCITRAL Model Law on Secured Transactions; and the relationship between the Leasing Convention, the Model Law on Leasing and the MAC Protocol); (iii) the identification of "key jurisdictions" on which to focus the analysis of legal literature and UNIDROIT's promotion efforts; and (iv) the most effective promotion and implementation mechanisms — such as committees of experts assisting the Secretariat in tracking implementation, cooperation with technical-assistance providers, targeted events, and dedicated bibliographic and impact resources on the relevant UNIDROIT webpage.

D. Comparative overview of the instruments

8. The table below maps the instruments analysed in this White Paper against this framework, indicating type, current reach, the predominant degree of influence observed and the stage of evolution. It is intended as a high-level summary; the detailed analysis follows in Sections 3 to 7.

Instrument	Type	Year (status)	Reach [2]	Predominant influence	Stage
Asset-based finance — Cape Town Convention system					
Cape Town Convention	Hard	2001 (in force 2006)	90 States + EU	Full — broad	Mature
Aircraft Protocol	Hard	2001 (in force 2006)	87 States + EU; ~1.9 m registrations	Full - broad	Mature / leading
Rail (Luxembourg) Protocol	Hard	2007 (in force 2024)	7 States + EU; low registry use	Full — narrow	Emerging
Space Protocol	Hard	2012 (not in force)	2 accessions	Limited	Emerging
MAC Protocol	Hard	2019 (not in force)	2 ratifications; 6 signatures	Partial → full	Emerging / growing
Maritime Protocol	Hard (future)	2026 – 2028 Work Programme (low priority)	—	None at present	Pre-development
Renewable Energy Protocol	Hard (future)	2026 – 2028 Work Programme (low priority)	—	None at present	Pre-development
Factoring					
Factoring Convention (Ottawa)	Hard	1988	9 States; 10 further signatures	Indirect — now via later texts	Mature / limited
Model Law on Factoring (+ Guide to Enactment)	Soft	2023 (GtE 2026)	Reforms in 5 States; informing 4 more; 3 partner guidelines	Partial → strong	Emerging / growing
Leasing					
Leasing Convention (Ottawa)	Hard	1988	10 ratifications; model for domestic laws	Full in a few; else indirect	Mature / limited
Model Law on Leasing (+ planned Guide to Enactment)	Soft	2008 (GtE planned)	~20 jurisdictions at full adoption	Full / partial across many; baseline elsewhere	Growing
Agricultural finance					
Model Law on Warehouse Receipts (+ Guide)	Soft (joint UNCITRAL)	2024	No enactments yet; used as template	None at present	Newly adopted

[2] As of 1 September 2026.

Instrument	Type	Year (status)	Reach [2]	Predominant influence	Stage
Legal Guide on Agricultural Financing	Soft (future)	2026 – 2028 Work Programme (high priority)	—	None at present	Pre-development
Model Law on Crop Receipts	Soft (future)	Proposed	—	None at present	Pre-development
Crowdfunding					
Model Law / Legal Guide on Investment-Based Crowdfunding	Soft (future)	2026 – 2028 Work Programme (high priority)	—	None at present	Pre-development

9. Read together, the table shows two routes to full adoption: ratification of a convention and enactment of national law entirely or largely based on a model law. The highly successful Aircraft Protocol and the widely enacted Model Law on Leasing illustrate the hard-law and soft-law routes respectively. By contrast, several instruments have had only an indirect or partial degree of influence. The third group of instruments are those currently under negotiation and remain at an early, limited pre-implementation stage, where influence is presently confined to feasibility work or academic study.

III. ASSET-BASED FINANCE (CAPE TOWN CONVENTION AND ITS PROTOCOLS AIRCRAFT, RAIL, SPACE, MAC, AND FUTURE MARITIME AND RENEWABLE ENERGY PROTOCOLS)

A. Development and adoption

10. Following a first proposal made to the UNIDROIT Governing Council in 1988 and extensive preparations and negotiations through a first Study prepared in 1989 (UNIDROIT 1989 – Study LXXII – Doc. 1), a Study Group phase from 1991 to 1997 (UNIDROIT 1998 – Study LXXII – Doc. 42) and three joint sessions of a Committee of Governmental Experts and the Sub-Committee of the International Civil Aviation Organization (ICAO) Legal Committee in 1999 and 2000 (UNIDROIT CGE/Int./3-Report), the UNIDROIT Convention on International Interests in Mobile Equipment (Cape Town Convention) was adopted at a Diplomatic Conference in Cape Town on 16 November 2001, held under the joint auspices of UNIDROIT and ICAO. Since entering into force in 2006, this Convention has set an international standard for asset-based financing concerning uniquely identifiable high-value mobile assets and it has become by far the most successful of the existing UNIDROIT instruments on access to credit.

11. Under the so-called two-instrument approach, the Cape Town Convention is to be read together with additional Protocols providing for the applicability of the Convention to specific categories of assets and allowing for sector-specific amendments of the Convention regime. The Cape Town Convention itself specifically mentions three categories of such assets: airframes, aircraft engines and helicopters; railway rolling stock; and space assets. The Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Aircraft Protocol) was adopted together with the Cape Town Convention at the Diplomatic Conference in Cape Town on 16 November 2001. The second Protocol to the Convention, the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (Luxembourg Rail Protocol) was adopted at the Diplomatic Conference in Luxembourg on 23 February 2007 under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF). This conference followed negotiations of the draft Protocol in a Committee of Governmental Experts from 2001 to 2003. Following five sessions of a Committee of Governmental Experts between 2003 and 2011, the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (Space Protocol) was adopted at the Diplomatic Conference in Berlin on 9 March 2012.

12. The Cape Town Convention also allows the extension of its application through additional Protocols to assets not specifically mentioned in the Convention. Under this provision, the fourth Protocol to the Convention, the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (Pretoria MAC Protocol) has been adopted at the Diplomatic Conference in Pretoria on 22 November 2019. This conference followed negotiations of the draft MAC Protocol in a Study Group phase between 2014 and 2016 and through two sessions of a Committee of Governmental Experts in 2017. Additional Protocols on other categories of assets (ships and renewable energy equipment) are currently under discussion.

B. Purpose

13. The purpose of the Cape Town Convention and the Protocols thereto is facilitating access to credit and to reduce credit costs for buyers and lessees of the high-value mobile assets covered by the Convention system. Creditors, including secured creditors under a security agreement, conditional sellers under title reservation agreements or lessors under a leasing agreement, can obtain reliable and enforceable proprietary interests in these assets which – in line with current legal thinking concerning the operation and efficiency of a modern secured transactions law – in turn

reduce credit risk and allow for better conditions for the access to credit for borrowers, buyers and lessees.

C. Key content

14. The legal framework established by the Cape Town Convention and the Protocols thereto is based upon four core principles. First, the Convention system provides for a supranational proprietary interest (international interest) that does not derive from national law. Under this principle, the creditors' protection in a cross-border financing transaction does not depend upon recognition of the validity of their proprietary interests under the applicable property law (usually the law of the location of the asset, the *lex rei sitae*) and the creditors' interests are given effect to in all Contracting States. Second, the legal position of creditors under the Convention system is also not to be qualified or modified by the debtor's bankruptcy or insolvency (bankruptcy law enforcement principle), protecting the creditors against the effects of stays or moratoria under national insolvency law. Third, the Convention provides creditors with rapid access to the collateral upon the occurrence of a default by the debtor, which may, in some cases be realised by way of self-help without the intervention of the courts (prompt enforcement principle). Fourthly, the Convention establishes simple and at the same time unambiguous legal rules regarding the ranking of holders of international interests vis-à-vis other - secured and unsecured - claims against the asset (transparent priority principle) on the basis of a system of registration in an electronic notice-filing International Registry established under the relevant Protocol.

D. Impact

1. Cape Town Convention and Aircraft Protocol

Implementation

15. The Cape Town Convention and the Aircraft Protocol are in force in 87 Contracting States (plus ratification by the EU), covering Civil Law and Common Law systems alike and including the majority of the largest economies worldwide. Since the Aircraft Protocol's entry into force on 1 March 2006, there have been 1.9 million registrations in the Dublin-based International Registry under this Protocol and this figure is expected to reach 2 million by the end of 2026.

16. The enormous success of the Cape Town Convention and the Aircraft Protocol is due to several core factors. The aircraft industry is subject to a largely harmonised technical and regulatory framework worldwide which generally facilitates cross-border transactions, including cross-border financing. Specifically for the aircraft industry, it is also possible to give a specific quantification to the general assumption that strengthening creditors' rights allows a reduction of credit costs. Under the OECD Sector Understanding on Export Credits for Civil Aircraft of 2011, export credit agencies may offer a reduction of up to ten percent of the minimum premium rates for export credit guarantees and other forms of official support if the relevant transactions are backed by asset-related security interests granted under the Cape Town Convention and the Aircraft Protocol (OECD discount). For the period 2009–2030, savings of USD 161 billion in financing costs are expected to result from the significant reduction in risk for lenders involved in secured aircraft financing transactions. The Aircraft Protocol also benefits from institutional support from ICAO as Supervisory Authority for the International Registry as well as strong and effective industry support through the Aviation Working Group (AWG) which represents major aviation manufacturers, leasing companies and financial institutions.

Engagement

17. UNIDROIT, acting as Depositary for the Cape Town Convention and the Aircraft Protocol (as well as for the other Protocols to the Convention), and other organisations, especially ICAO, AWG and the Cape Town Convention Academic Project (CTCAP), are continuously engaged in efforts to support the ratification, implementation and study of these instruments. Among the most relevant activities is the series of Official Commentaries to the Cape Town Convention and its Protocols, currently in the fifth edition for the Aircraft Protocol, authored by Professor Sir Roy Goode and published by UNIDROIT. Other engagement activities consists of, among others, a comprehensive digitised and searchable repository, the publication of Annotations to the Official Commentary on the Convention and the Aircraft Protocol and the organisation by AWG and the CTCAP of an annual conference, as well as other workshops and events. The CTCAP covers all Protocols under the Convention and pursues academic activities, including a number of projects looking at general issues raised by the Cape Town Convention, such as electronic registration, and compliance with commercial law treaties.

2. Rail Protocol

Implementation

18. The Rail Protocol entered into force on 8 March 2024 and currently has seven Contracting States plus a ratification by the EU. The International Registry of Interests in Railway Rolling Stock in Luxembourg became operational in 2024 as well, but it has so far reported a low amount of use.

19. Compared with the Aircraft Protocol, the Rail Protocol entered into force relatively recently, having been notably slower in attracting Contracting States. This is not due to legal or conceptual aspects of the Rail Protocol: In principle, this Protocol is capable of generating similar benefits for parties as the Aircraft Protocol. Instead, the (relatively) uptake is due to several factors, including the gradual privatisation of the rail sector, a much more dispersed industry (manufacturers of railway rolling stock) and the fact that the general level of investment in rail infrastructure and cross-border rail traffic is often relatively low, especially in emerging markets (where the reduction in borrowing costs could matter the most). Moreover, even if it is acknowledged that the Rail Protocol would also apply to domestic transactions, the Protocols to the Cape Town Convention are conventionally perceived as being focused on international transactions, and technical and regulatory standards in the rail industry are less harmonised worldwide than in the aviation industry which could impede the efficiency of the cross-border enforcement into rail assets.

Engagement

20. UNIDROIT as Depositary for the Rail Protocol engages with other organisations, especially OTIF and the Rail Working Group (RWG) in efforts to promote the ratification and implementation of the Rail Protocol. Again, in comparison with the Aircraft Protocol, it is to be noted that – due to a different level of industry involvement – the RWG cannot devote the same amount of funding and resources to this instrument as the AWG. The Supervisory Authority for the International Registry is a body specifically established for this purpose under the Rail Protocol which similarly is not in a position to provide funding for ratification and implementation efforts.

21. Apart from the publication by UNIDROIT of the Official Commentary on the Rail Protocol (currently in its third edition), the main engagement activities of UNIDROIT and the RWG have focussed on dissemination and information. The RWG also developed the Unique Rail Vehicle Identification System (URVIS) and the RWG and OTIF have participated in the development and ongoing revision of the UN/UNECE Model Rules on the Permanent Identification of Railway Rolling Stock, which is central to the permanent marking of railway rolling stock with URVIS numbers issued by and registered in the International Registry.

3. Space Protocol

22. The Space Protocol, despite having been adopted in 2012, has so far only been acceded to by two States (Paraguay and the Democratic Republic of the Congo) and its entry into force, which requires ten Contracting States, is not foreseeable for the near future.

23. The limited uptake of the Space Protocol so far, can be attributed to the fact that when the Protocol was adopted, the larger and dominant commercial satellite operators did not primarily rely on asset-based finance as method of financing, but rather on equity finance. Whether asset-based finance under the Space Protocol could be attractive for new entrants to this market and whether sufficient political support could be generated to attract further ratifications, would appear to depend upon changes in the structure of the market and the development of a secondary market for space assets.

24. UNIDROIT is currently supporting the establishment of a new industry representation similar to Working Groups for the other Protocols to investigate whether the satellite financing market has matured to moving to asset-based finance. This could provide the basis for broader industry support for the Space Protocol.

4. MAC Protocol

25. Since its adoption in 2019, the MAC Protocol has attracted six signatures (including the United States of America and the European Union) and has been acceded to by two States (Paraguay and the Democratic Republic of the Congo). Further ratifications are under discussion. The MAC Protocol is getting considerable attention both from the private sector and from potential Contracting States. A MAC Working Group (MAC WG), primarily representing large equipment manufacturers, supports UNIDROIT and the Preparatory Commission and its Ratification Task Force, in promoting ratification and implementation. In addition to the role of Depositary, UNIDROIT will also act as Supervisory Authority for the International Registry under the MAC Protocol.

26. The UNIDROIT Secretariat is also collaborating with other relevant international organisations (such as the World Bank Group and the European Bank for Reconstruction and Development (EBRD)) in regional promotion efforts targeted at individual potential Contracting States. Notably, the World Bank is in discussions on including the adoption of an efficient system of asset-based financing for mining, agricultural and construction assets (as would be available under the MAC Protocol) by lender countries into its revised policy objectives which form the basis of its lending and other operational activities (Financial Sector Assessment Program, FSAP).

5. Maritime Protocol

27. The original suggestion to include ships within the scope of application of the (future) Cape Town Convention was discontinued in 1996 after consultations with the Comité Maritime International (CMI) with a view to focus on the promotion of the then-recent Geneva International Convention on Maritime Liens and Mortgages of 1993. Once it became clear that the latter Convention would be unlikely to attract a substantial number of Contracting States (21 States so far, with none of the world's major shipping nations included), UNIDROIT reassessed the issue of a Maritime Protocol to the Cape Town Convention, and a preliminary feasibility study by the UNIDROIT Secretariat showed good potential for such an instrument (UNIDROIT 2013 – C.D. (92) 5(c)/(d)), recommending further studies on the subject be undertaken to identify the areas of the law of proprietary security over ships in which there is sufficient demand for an extension of the Cape Town system. This subject has been included as a low-priority item in the UNIDROIT Work Programme since. There have been several expressions of interest concerning such a Protocol both from industry groups and individual States; moreover, industry practice has suggested that this project should also consider the specific issue of extending the scope of a potential Maritime Protocol to shipping containers.

6. Renewables Protocol

28. Following a proposal by a UNIDROIT Member State, which in turn was based upon a request by the industry, the UNIDROIT Secretariat has since 2012 considered the feasibility of a future Protocol to the Cape Town Convention covering renewable energy equipment. The initial preliminary feasibility study by the UNIDROIT Secretariat recommended further studies and outreach to industry representatives and outside experts (UNIDROIT 2013 – C.D. (92) 5(c)/(d)). As a low-priority item in the UNIDROIT Work Programme, a limited amount of resources have been devoted to this item so far and broader consultations with the industry have not yet been undertaken.

E. Recommendations for the Future

29. This paper recommends the following initiatives, projects and other courses of action to be undertaken by UNIDROIT in relation to the Cape Town Convention and the Protocols. It is to be noted that while these recommendations are directed at UNIDROIT, other existing stakeholders, especially the relevant Industry Working Groups, might pursue some of these courses of action independently of UNIDROIT. To allow some prioritisation within this rather extensive list of recommendations each recommendation is assigned a level of urgency (short-term = 3; mid-term = 2; long-term = 1), relevance (crucial = 3; high = 2; normal = 1) and required resources (high = 3; mid = 2; low = 1). For each instrument, except for the Space and Renewables Protocols, one item has been given the highest level of urgency, indicating that this is the recommendation that should be followed with priority over the others.

1. Cape Town Convention

30. As the single text of authority on the Convention and the Protocols thereto (with the authority conferred by resolutions of the Treaty Conferences) the Official Commentary series is of the highest relevance for the implementation and uniform application of the Cape Town Convention system. Therefore, UNIDROIT should consider in close consultation with relevant stakeholders and experts (ICAO, OTIF, AWG, RWG, CTCAP and others) whether or not a procedure should be developed to ensure that these Commentaries can continue to be updated to take into account future developments in the market practice and jurisprudence in order to provide for a uniform understanding and interpretation of the Convention and the Protocols thereto in line with best practices in the market. This analysis should also include (i) the role of the various relevant stakeholders and experts, (ii) whether a digital, modular structure for future editions could be developed, instead of periodic static editions, (iii) in particular, whether there could be concise guidance editions of the texts of the Commentaries tailored to particular authorities (courts, administrative authorities, export authorities), and (iv) how to preserve the independence that had underpinned the authority of the existing Commentaries and to make use of the technical and industry expertise available within the various relevant stakeholder organisations (urgency 3; relevance 3; resources 1).

31. In addition to a potential procedure for updating the Official Commentary series, it could be considered whether there is a demand for the issuing of opinions drafted by a panel with a proper representation of the relevant stakeholders and experts as under the preceding paragraph on the application of the Convention and its Protocols in individual/concrete court cases (similar to Advisory Groups for other Conventions/Instruments). To assess whether such a demand exists, the UNIDROIT Secretariat should consult industry practitioners as well as Contracting States for information concerning court practices concerning the application of the Convention and its Protocols (urgency 1; relevance 1; resources 1).

32. The level of funding and resources available to the existing Industry Working Groups (AWG, RWG, MAC WG) varies considerably. The UNIDROIT Secretariat could consider promoting the exchange

and dissemination of ideas concerning projects and activities undertaken by some of the existing Working Groups (such as the AWG's compliance index) in order to evaluate whether similar projects could also be conducted for other Protocols. This could, for example, include the promotion of conferences between the existing Working Groups. Such conferences could also be organised for the various Commissions of Experts for the Supervisory Authorities under the existing Protocols (urgency 2; relevance 1; resources 2).

33. UNIDROIT could consider seeking feedback from legal practitioners whether there would be sufficient broader support for the idea of developing – together with industry representatives from the existing Industry Working Groups and other experts – standard clauses for asset-based financing, e.g. concerning default and choice of law or other standard terms such as representations and warranties, insurance clauses and personal guarantees. These clauses could then be incorporated by reference, increasing the efficiency of the contracting process, possibly also by providing for translations (urgency 1; relevance 1; resources 2).

34. Asset-based finance could be made even more attractive if the strengthening of creditors' rights under the Cape Town Convention system were reflected in the applicable banking regulatory requirements. While the Industry Working Groups (especially AWG and RWG) have already been very active in this respect, the UNIDROIT Secretariat should seek to continue these efforts and cooperate with other relevant organisations (including UNCITRAL, the World Bank and potentially also the Secured Transactions Coordination Conference) to promote greater recognition for asset-based lending in general, and Cape Town Convention-based lending in particular, in banking regulation through a reduction of risk-weighting for Convention-based lending in relevant minimum capital requirements under the Basel Accords and European EBA regulation, as well as under other relevant banking regulation in other jurisdictions. There should be a similar engagement to seek more preferential regulatory treatment in relation to the national regulation of financial leasing institutions (urgency 1; relevance 2; resources 1).

35. The financing of assets under the Cape Town Convention system, especially concerning rail assets, agricultural and construction equipment as well as renewable energy equipment, has strong connections to issues of sustainable development and recovery finance. The UNIDROIT Secretariat should seek to promote the potential sustainability relevance of financing and secondary markets for assets under the Cape Town Convention and should explore the potential for cooperation with loan market associations (such as the Loan Market Association (LMA), Asia Pacific Loan Market Association (APLMA), Loan Syndications and Trading Association (LSTA)) on the application of sustainability-linked lending principles to equipment financing supported by the Cape Town Convention system (urgency 1; relevance 2; resources 1).

36. Adding to the theoretical foundations of secured transactions law and taking stock of twenty years of practical experience with the Cape Town Convention, the UNIDROIT Secretariat should consider commissioning/conducting – preferably together with other international organisations, such as development banks – broader studies on the overall economic efficiency of protecting secured creditors in the event of debtor's insolvency compared with the interests of (unsecured) creditors in general, distinguishing between different types of collateral (urgency 1; relevance 2; resources 2).

37. The list of translations of the Cape Town Convention and the Protocols on the UNIDROIT website should be expanded. While these translations would not become official treaty translations (with equal binding legal force as the official translations), these unofficial translations could support regional ratification efforts for the various Protocols (urgency 1; relevance 1; resources 1).

38. The UNIDROIT Secretariat should develop – together with AWG and the CTCAP – a process for the continuous updating of the repository of cases and academic literature on the Cape Town Convention and the Protocols thereto, which are available on the CTCAP website. The existing repository is already an enormously useful tool for the implementation and application of the

Convention system. However, it continuously needs to be kept up to date. The CTCAP's experience shows that this requires personnel and resources, for which sufficient funding would have to be secured. Moreover, clear criteria need to be developed concerning the languages covered and the relevance of cases or academic literature to be included in the repository for the application of the Convention system; the entry into force of additional Protocols also raises the issue of cooperation with other Industry Working Groups (urgency 1; relevance 2; resources 2).

39. The UNIDROIT Secretariat should continue its cooperation with the CTCAP, also ensuring the latter's continuity in view of any future changes in its directorship. The CTCAP with its conferences and other academic activities fulfils a very important role as an independent think-tank for matters related to the Convention system, including giving space for the discussion of matters such as the development of new work projects for the Secretariat or the relevant industry representations, the possible extension of the Convention system to new categories of assets or items for possible review conferences. Such matters are vital for the future application and further development of the Convention and its Protocols and therefore UNIDROIT should ensure that there is institutional continuity of Cape Town Convention expertise and that this forum remains available for a broad discussion of these topics, free from institutional restraints and benefiting from the participation of both academics and practitioners (urgency 2; relevance 2; resources 1).

2. Aircraft Protocol

40. Efficient enforcement is one of the core success factors for a modern secured transactions regime. While the Cape Town Convention and its Protocols do contain principles providing creditors with rapid access to collateral, the concrete rules of judicial and extra-judicial enforcement are still largely treated as issues of national law. To promote law reform and harmonisation in this area, UNIDROIT should prioritise the development of a Model Procedural Law implementing the Convention and the Aircraft Protocol, as approved by the UNIDROIT Governing Council in its 107th session in May 2026. As a joint project in cooperation with AWG, this Model Procedural Law should provide Contracting States with a harmonised legislative template that can be adapted to their national legal systems, enhancing compliance with the specific procedural obligations and timeframes established thereunder and taking into account current market practices on enforcement of aircraft interests and leases. This project should be coordinated with UNIDROIT's ongoing study on Best Practices for Effective Enforcement (Study LXXVI B), even though it is to be expected that the peculiarities of enforcement concerning aviation assets warrant separate treatment (urgency 3; relevance 3; resources 3).

41. While the Aircraft Protocol is a near worldwide success, there are still some regions of the world where – despite the existence of a relevant domestic aviation industry – clusters of neighbouring States have not yet ratified the Aircraft Protocol. UNIDROIT should cooperate with other relevant organisations (AWG, International Finance Corporation (IFC), African Development Bank (AfDB), the Asian Development Bank (ADB) and the EBRD) and individual States to develop specific programmes for ratification, enactment and capacity building programmes, e.g. assisting States in drafting the necessary legislation to implement the Cape Town Convention and the Aircraft Protocol, in the Middle Eastern and Northern Africa (MENA) region or in the Civil Law jurisdictions of Eastern Europe and Eastern Asia (urgency 2; relevance 2; resources 2).

3. Rail Protocol

42. As of yet, the OECD discount, which is one of the major success factors for the Aircraft Protocol, is not available outside the aviation industry. The UNIDROIT Secretariat should therefore discuss (together with the RWG and other relevant organisations such as OTIF, EBRD, AfDB, ADB and the World Bank) with OECD/Export Credit Agencies (ECAs) the issue of the potential availability of the OECD discount not only for aircraft, but also for other types of assets. This would involve considering what would be required to achieve this and how could this be reflected in a guide to

enactment or other guidance document on declarations for potential Contracting States. Initial steps have already been taken in this direction by some ECAs (see, e.g., the extension of credit terms for financing of zero-emissions rolling stock under the OECD States' ECAs' Arrangement on Officially Supported Export Credits/Climate Change Sector Understanding; or the announcement of the Railway Rolling Stock "Cape Town Discount" by ECIC South Africa on 28 August 2025). It should be noted that at least for rail assets there would be probably not be a single universal discount, but rather distinctions concerning the treatment of locomotives and wagons and of new or used equipment. As a minimum, it should be suggested that for asset-based finance (specifically for assets covered by the Cape Town Convention), the factor of buyer risk should be less relevant in the calculation of ECA premiums (urgency 3; relevance 2; resources 1).

43. Concerning the treatment of export credit guarantees for the financing of railway rolling stock, there could also be discussions about the availability of a similar discount from ECAs of non-OECD States such as India and China, which are important manufacturers of railway rolling stock (urgency 1; relevance 2; resources 1).

44. As with the Aircraft Protocol, the UNIDROIT Secretariat should also, in relation to the Rail Protocol seek to cooperate with groups of States and relevant other organisations to develop regional ratification efforts. These efforts should be targeted at regions with highly integrated cross-border railway networks, where the application of the Rail Protocol in cross-border financing could be expected to be most beneficial. This would, for example, include the Western Balkans and Eastern Europe (including Ukraine), where UNIDROIT could cooperate with the European Union (EU) and the EBRD, Southern Africa and the region of the Lobito Corridor (together with AfDB and the World Bank) and in South America (together with the Inter-American Development Bank (IADB) and local export credit agencies) (urgency 2; relevance 2; resources 2).

45. In close cooperation with the RWG and relevant organisations from the respective industry sector, the UNIDROIT Secretariat should emphasise the potential of the system of URVIS numbers and the permanent marking of railway rolling stock for use by regulators and insurers relying on reliable, up-to-date and easily accessible information about the location and status of railway rolling stock. This could develop into an additional source of revenue for the International Registry, supporting the operation of the registration system in general (urgency 1; relevance 1; resources 1).

4. Space Protocol

46. UNIDROIT should continue to monitor relevant market developments and to support discussions on the Space Protocol in the industry practice. This can be done in cooperation with the recently established Focus Group on the Space Protocol (urgency 1; relevance 2; resources 1).

47. Concurrently, UNIDROIT should continue to engage with international organisations, such as the International Telecommunication Union (ITU) and the United Nations Office for Outer Space Affairs (UNOOSA) to identify the relevant organisation which could serve as the Supervisory Authority for any future International Registry to be established under the Space Protocol (urgency 1; relevance 2; resources 1).

48. The space industry is undergoing a significant transformation, especially with the reduced cost of access to space, the rise of large satellite constellations, and plans from organisations to develop long-term presence in orbit. All of these developments should be monitored to understand where asset-based financing can play a role. In particular, UNIDROIT could – potentially together with ITU, UNOOSA and/or the Focus Group on the Space Protocol – assess whether technological developments have made or are in the process of making in-orbit transfers commercially viable and whether the resulting secondary market could support greater secured lending. More substantive efforts to promote the Space Protocol should be expended only once these developments have led

to a more positive expression of support from the industry for this Protocol (urgency 1; relevance 2; resources 1).

5. MAC Protocol

49. The UNIDROIT Secretariat should continue to support collaboration with potential Contracting States, members of the MAC Protocol Preparatory Commission and relevant industry representations in the MAC Protocol Ratification Task Force which serves to coordinate efforts to promote the ratification of the Protocol through contacts with international organisations, State governments and industry representatives, knowledge-sharing and capacity building activities (urgency 3; relevance 2; resources 1).

50. Building upon the collaboration with other stakeholders as referred to in the preceding paragraph, a particularly relevant step for the prospect of further ratifications of the MAC Protocol would be to engage with the World Bank to encourage it to consider the Protocol, where relevant, in its Financial Sector Assessment Program (FSAP), particularly in assessments of legal frameworks for secured transactions, credit infrastructure and access to finance (urgency 2; relevance 2; resources 1).

51. As consistent with the corresponding Rail Protocol recommendation, the UNIDROIT Secretariat should discuss with OECD and ECAs the availability of an OECD discount concerning the cross-border financing of MAC assets. Such discussions should not be deferred to a time when the MAC Protocol is actually in force: The prospect of such a discount would greatly increase the attractiveness of the MAC Protocol for potential Contracting States and could therefore lead to an earlier entry into force of the Protocol (urgency 1; relevance 2; resources 1).

52. The financing of mining, agricultural and construction assets is one of the first major steps in rebuilding economies ravaged by war and destruction, such as Ukraine, Syria and others. The application of the MAC Protocol could therefore be highly relevant in recovery programmes in war-affected regions worldwide. The UNIDROIT Secretariat should therefore discuss with organisations such as the United Nations Development Programme (UNDP) the potential for including the application of the MAC Protocol in the relevant reconstruction programmes, especially public-private platforms (urgency 1; relevance 2; resources 1).

53. The MAC Protocol provides for a number of Contracting State declarations concerning issues not covered by other Protocols (e.g., on immovable-associated equipment and on interests in inventory). UNIDROIT should develop a policy-neutral and informative guide for potential Contracting States setting out these MAC Protocol-specific alternatives and declarations (urgency 2; relevance 2; resources 2).

54. Partly related to the issues covered by the preceding paragraph, the MAC Protocol also raises numerous questions concerning the operation of the Cape Town Convention system in supply-chain finance, especially in relation to dealer/inventory financing. Due to differences in the factual situations, the Aircraft and Rail Protocols are not usually applied in a supply-chain finance context and there is therefore no experience in the market concerning the practical application of the Cape Town Convention in relation to this type of financing. Therefore, UNIDROIT should develop a practice guide covering the application of the MAC Protocol in this context, explaining to market participants how the Cape Town Convention and the MAC Protocol can be used in supply-chain finance arrangements (urgency 2; relevance 2; resources 3).

55. Among the most decisive factors in creating support for the MAC Protocol both from the industry and from national governments is the communication of the economic benefits to be derived from the application of this Protocol. This should be based on reliable and up-to-date economic impact assessments on a national, regional or global level. In 2026, such an economic impact assessment

was conducted for the Government of Japan and UNIDROIT should support the preparation and use of such studies on a wider scale, which could also be used as an argument in discussions with OECD/ECAs (see above para. 51) concerning the availability of an OECD discount(urgency 2; relevance 2; resources 1).

6. Maritime Protocol

56. To garner support for a future Maritime Protocol to the Cape Town Convention, the UNIDROIT Secretariat should continue its outreach to CMI and relevant industry organisations on the prospects of such a Protocol in general, emphasising the potential benefits such a Protocol could have when utilising the international interest principle of the Cape Town Convention as opposed to the conflicts-of-laws approach under the Geneva Convention and leaving out the contentious issue of the treatment of maritime liens which was a main factor in the lack of success of the Geneva Convention and earlier attempts to harmonise the law of proprietary security over ships (urgency 3; relevance 3; resources 1).

57. The UNIDROIT Secretariat should also engage with major shipping registers worldwide: Many of these are in Contracting States to the Cape Town Convention and the Aircraft Protocol, showing a general openness of the relevant state of registry towards adopting the Cape Town Convention. For these Shipping Registers, the possibility of the registration of interests under a Maritime Protocol could be seen as an enhancement of the service offered to their customers, rather than competition (urgency 2; relevance 2; resources 1).

58. In the development of a future Maritime Protocol, conflicts with existing instruments covering security over ships should be avoided. Earlier studies have shown that this would not be a cause for concern in relation to the instruments existing so far (cf. UNIDROIT 2013 – C.D. (92) 5(c)/(d)). The UNIDROIT Secretariat should engage with other international organisations in order to demonstrate that the same applies concerning the compatibility of a Maritime Protocol with the recent United Nations Beijing Convention on the International Effects of Judicial Sales of Ships of 2022. As the latter instrument entered into force in February 2026, the present moment would be a good opportunity to join promotion efforts with the CMI in the support of both the Beijing Convention and the future Maritime Protocol, which should be seen as complementing international instruments in the regulation of interests in maritime assets (urgency 2; relevance 2; resources 1).

59. Additionally, the UNIDROIT Secretariat should also continue to assess the feasibility of a potential Protocol on container fleets, as the suitability of these assets for inclusion into the Cape Town Convention system is clear at least concerning some of the relevant criteria in this context (highly mobile, uniquely identifiable), even if there might be concerns about the relatively low value of individual containers which might require deviations from the current model of individual asset-based registration under the Cape Town Convention system. Moreover, a project on containers could also be perceived by other relevant organisations in the maritime sector as complementary to any existing instruments in this area (urgency 1; relevance 1; resources 1).

7. Renewable Energy Equipment Protocol

60. While there is clearly potential for the application of the Cape Town Convention system to have positive effects on the conditions for the financing of renewable energy equipment, especially wind and solar energy equipment, additional studies and outreach to the market practice are necessary to further assess the prospects of such an instrument and to determine its substantive scope and content (urgency 1; relevance 2; resources 1).

61. The UNIDROIT Secretariat should therefore continue to participate in discussions with the renewable energy industry in order to assess existing deficiencies in international financing practices for renewable energy equipment and to suggest making use of UNIDROIT's general expertise in the

harmonisation and modernisation of secured transactions regimes in this sector (urgency 1; relevance 2; resources 1).

62. Concerning the future content of an instrument on renewable energy equipment, and depending on the input received from the industry practice, the UNIDROIT Secretariat should, in its further studies, consider potential variations of the general approach under the Cape Town Convention system as regards renewable energy equipment, e.g.:

- focusing on the income stream from the project rather than enforcement against individual assets (in line with general principles of project finance);

- limiting enforcement possibilities that would be in conflict with the interests in the continued operation of renewable energy joint venture projects, especially as regards the possibility of selling individual objects within a project to competitors of the project partners;

- choosing a different type of instrument (e.g. a Guide or Principles instead of a Protocol) due to the (relative) lack of a cross-border element in renewable energy equipment.

IV. FACTORING (1988 CONVENTION, 2023 MODEL LAW, AND 2025 GUIDE TO ENACTMENT)

A. Introduction

63. Factoring, as used in this White Paper, is a generic term covering various types of financing, all of which involve either the outright transfer of, or the creation of a security right in, the right to payment for monetary obligations, whether earned or to be earned ("receivables") owed to the financed party. The key point is that the receivable can be transferred, or an interest in it given by way of security, to the person providing the financing ("factor") in exchange for payment by the factor to the transferor, either as a sale of the receivables to the factor or by using those receivables as collateral for a loan by the factor to the transferor. The factor may obtain the right to obtain payment directly from the financed party's customers (i.e., the debtors on the receivables) in specific circumstances, depending on the model of factoring adopted. (It should be noted that nomenclature is not always used consistently in this area. For example, the UNIDROIT Factoring Convention uses a narrower definition of factoring.[3]) The financing of receivables through factoring structures provides a high level of credit protection to the financier, facilitating financing against a continuing stream of receivables. A secure and predictable legal framework for receivables financing is therefore important to improve access to credit.

B. Development and adoption of instruments

64. Most of the world's factoring transactions are domestic, necessitating a predictable and effective domestic legal regime. In many transactions, however, there is a cross-border element, in that not all three relevant parties (the financed party, the factor and the debtor of the receivable) have their places of business in the same State. There is, therefore, a need to address legal impediments arising both from domestic rules and from the lack of harmonisation between domestic regimes. There have been a number of instruments fulfilling this need. This section sets out a brief summary of the following instruments: the UNIDROIT Factoring Convention, the United Nations Convention on the Assignment of Receivables in International Trade (developed by UNCITRAL), the UNCITRAL Model Law on Secured Transactions and the UNIDROIT Model Law on Factoring.

1. UNIDROIT Factoring Convention (Ottawa 1988) ("Factoring Convention")

65. The main purpose of the Factoring Convention was to increase predictability in cross-border receivables financing transactions by providing a set of uniform rules within a tightly defined area. It applies to international factoring contracts where at least two parties have their places of business in different States and at least one is a Contracting State (Art. 2) and covers assignments of existing and future receivables arising from contracts for the sale of goods and the supply of services (Arts. 1 and 5). It only provides rules on the actual transfer of such receivables in factoring transactions and does not deal with a factor's rights in proceeds of receivables or the third-party effectiveness and priority of the factor's rights in receivables. The entire Convention may be excluded by the parties to the factoring contract, without the debtor's assent being required (Art. 3 (1)). The Factoring Convention has been in force for thirty years and has so far secured only nine ratifications. However, regardless of the disappointing number of ratifications, the influence of the Convention in subsequent factoring laws has been considerable.

[3] See UNIDROIT Convention on International Factoring Article 1(2).

2. United Nations Convention on the Assignment of Receivables in International Trade (2001) ("Receivables Convention")

66. The Receivables Convention was concluded in 2001 and applies both to the assignment of international receivables and to the international assignment of domestic receivables (Arts. 1 and 3). It provides substantive rules in relation to many key issues in the transfer of receivables (including many influenced by the Factoring Convention) but, again, does not lay down substantive priority rules to determine the relative rights of an assignee against competing claimants. Instead, it points to the law of the assignor's State, thus subjecting all priorities among competing creditors to the law of the assignor's location (Art. 22). The Receivables Convention has been ratified thus far by only two States in the last 25 years (Liberia in 2005 and the USA in 2019). Yet, since its adoption in 2001, it has had an influence on most national laws on the assignment of receivables in general and factoring in particular.

67. Neither the Factoring Convention nor the Receivables Convention deal comprehensively with all issues relating to the international and domestic transfer of international and domestic receivables.

3. UNCITRAL Model Law on Secured Transactions ("MLST") (2016)

68. The MLST was prepared for the immediate purpose of implementing the recommendations of the UNCITRAL Guide on Secured Transactions ("Guide on Secured Transactions"), which was adopted in order "to assist States in developing modern secured transactions laws with a view to promoting the availability of secured credit". It was adopted by UNCITRAL in 2016, providing the most up-to-date, comprehensive, model for a functional legal regime governing secured financing in movable assets in general, including factoring and receivables finance.

69. The MLST applies to security rights in movable assets (Art. 1.1) including receivables and also applies to outright transfers of receivables, addressing all the key issues arising in connection with the assignment of receivables in factoring transactions (i.e., creation, third-party effectiveness by registration in a public registry, priority, enforcement, rights and obligations of the debtor, and applicable law). It includes some default rules in relation to the relationship between the factor and the client (Arts. 57-59) and rules addressing the rights and obligations of the debtor of the receivable (Arts. 61-67). The MLST is entirely consistent with the provisions of the Receivables Convention.

C. UNIDROIT Model Law on Factoring ("MLF") (2023)

70. The MLF is the most up-to-date and comprehensive iteration of a factoring law. It is suitable for both domestic and international transactions (and includes a section on conflict of laws). It was adopted in 2023. The MLF Guide to Enactment ("MLF GtE") was approved by the Governing Council in 2025 and was formally launched on 8 June 2026.

1. Background

71. Some States have already adopted a comprehensive secured transactions law, based on the MLST or on other model laws, which includes rules on factoring transactions. Two model laws on factoring were adopted prior to the MLF (the Model law on Factoring by the International Factors Group and another by the African Export-Import Bank). Other States, however, including some States which have adopted a more general secured transactions law, consider that good factoring practices may develop more rapidly if an asset-specific law were adopted. Given the continuing absence of affordable credit in many jurisdictions, particularly for micro, small, and medium enterprises, in 2019 the World Bank Group made a proposal to UNIDROIT for the development and adoption of a standalone factoring model law as a way to promote receivables financing.

2. Purpose

72. The purpose of the UNIDROIT MLF is to provide a modern legal framework for implementation by those jurisdictions where the law and practice fail to provide sufficient certainty for a factoring industry to thrive. It is broadly consistent with the UNCITRAL MLST, so that a State that implements the MLF (because it wants a bespoke factoring law) may at a later date reform its secured transactions law in line with the MLST without disruption to factoring practices developed under MLF. There are, however, some small differences stemming from its different focus or from recent developments. For example, while both instruments provide for an "anti-assignment clause override" (that is, that a transfer of a receivable is effective notwithstanding any contractual limitation), the MLF provides that a transferor or transferee is not liable for breach of such a contractual limitation while under the MLST such liability remains possible (MLST Art 13, MLF Art 8). Further, the scope of the anti-assignment clause override is wider under the MLF as it includes receivables arising from the provision or processing of data, which is not explicitly covered under the MLST (MLST Art 13(3), MLF Art 2(g)). Some parts of the registry provisions are also updated to reflect technological developments in registration practices.

3. Key features

73. The MLF is a comprehensive legal instrument designed to be implemented through legislation with necessary modifications to align with the enacting state's fundamental legal concepts and precepts. It covers the most important private law aspects of the transfer of receivables. Its scope is delineated by the definition of "receivables" and "transfer". "Receivables" are defined as a subset of all types of receivables; the term is limited to "trade receivables" (broadly speaking) and other analogous receivables (Art. 2 (g)). "Transfer" is defined widely, including both an "outright transfer" and a "security transfer" (functionally understood) (Art. 2 (j)).

74. The MLF provides rules dealing with the transfer of receivables as between the parties to the transfer and as against third parties, priority conflicts where a receivable is transferred more than once by the same transferor, the rights and obligations of the transferor, transferee and debtor, collection of transferred receivables and enforcement of security rights in receivables, conflict of laws and transition. Effectiveness against third parties is obtained by registration, and the provisions concerning registration are contained in an annex.

75. The Guide to Enactment for the MLF ("MLF GtE") explains the legal rules and the transactional context in which they apply and gives guidance to government officials and legislative bodies on how to implement the MLF. The MLF GtE contains an Annexe dealing with technological developments (including tokenisation) ("Digital Economy Supplement"). This supplement to the MLF GtE can be kept up to date more easily than the GtE itself. This is a good practice which may influence future instruments.

D. Impact of instruments

1. Implementation

76. The MLF offers a model that is intended to provide certainty and remove legal impediments to domestic factoring transactions without a cross-border element, while also improving harmonisation of factoring laws. The Factoring and Receivables Conventions are valuable instruments for cross-border factoring transactions. However, whereas the Factoring Convention does not provide for conflict of laws rules, the MLF does provide such rules. Moreover, under the MLF a transfer of receivables is not effective against third parties until notice of the transfer has been registered and, unlike the Receivables Convention, the MLF includes substantive rules on priority. Thus, the MLF largely supersedes the previous instruments and improves the private law relating to domestic and cross-border receivables financing transactions.

77. Multilateral Development Banks (MDBs) such as the EBRD and the WBG have led MLF implementation efforts globally, with support from other stakeholders like the International Law Institute and FCI. Despite its relatively recent adoption, the MLF has inspired and influenced law reform efforts in jurisdictions as diverse as North Macedonia, the United Arab Emirates, Ukraine, Uzbekistan and Viet Nam. The MLF has also been relied upon in more recent and ongoing reform processes taking place in Azerbaijan, Georgia, Jordan and Türkiye.

2. Relationship with secured transactions law reform

78. Many jurisdictions have adopted general and comprehensive laws on secured transactions, based either on UNCITRAL's MLST (or the preceding Legislative Guide) or regional model laws such as the EBRD Model Law and the OAS Model Law on Secured Transactions. Most of these laws incorporate at least some provisions on factoring (along the lines of those in the MLST).[4] Some Latin American jurisdictions that had adopted general secured transactions laws decided to also adopt a free-standing law on factoring.[5] Yet other jurisdictions proceeded to tackle secured transactions law reform in a more piecemeal and fragmented fashion, and have approached factoring law reform in the same way.[6] In a few other jurisdictions, the law on receivables financing remains unreformed and complex.[7] While efforts to facilitate and encourage receivables financing through law reform efforts are commendable in principle, these jurisdictions should be encouraged to rely on the MLF as useful guidance in moving towards a more comprehensive and coherent framework of asset-based financing.

3. Digitisation

79. There is huge interest in the use of technology to enable factoring to be scaled up and to operate more efficiently. The use of digital invoices (some of which operate as negotiable instruments, and some of which operate in other ways) is already widespread in many States, necessitating the adoption of a robust legal underpinning. The MLF provides suitable support in this regard (although it should be noted that negotiable instruments are outside its scope) and the digital economy supplement to the GtE provides specific analysis and guidance.

4. Regulation

80. Many States seek to regulate the activity of factoring, either within their existing financial regulatory systems or through more specific legislation. When considering regulatory law, a State needs to consider the impact of this regulatory law on the regime of its private law, and the MLF GtE provides guidance on many aspects of regulation of factoring, including the supervisory framework, licensing requirements, prudential rules, and rules on conduct of business, customer protection, AML and CTF. Moreover, some States seek to pass legislation combining regulatory and private law rules into one instrument (the IFC Factoring Regulation Knowledge Guide provides guidance on how this should be achieved, as does the MLF GtE). The MLF should serve as an important guide on private law matters for States considering the adoption of factoring regulation.

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4 See, for example, the secured transactions laws in El Salvador, Honduras, Panama, Dominican Republic, Bangladesh, Philippines, Brunei, Kenya, Zambia, Nigeria, and Saint Lucia.

5 For example, Colombia, Peru, Guatemala, Costa Rica.

6 For example, Viet Nam, Thailand and Japan.

7 For example, Indonesia and South Africa.

5. Engagement

81. UNIDROIT has taken many steps to publicise the MLF[8] and to engage with States with a view to implementation. International organisations such as the FCI and the World Bank Group have assisted by organising events[9] and producing publications aimed at facilitating adoption.[10] The FCI, in particular, has been very active in promoting the MLF. This contribution has been noted in many trade publications such as the "Global Trade Review," "Trade Finance Global," "IFA Commercial Factor" etc. Since its adoption and publication, the MLF has been recognised in three prominent guidelines published by partner organisations (the World Trade Board's Financial Inclusion in Trade Roadmap, the EBRD New Finance Support Report and the IFC Factoring Regulation Knowledge Guide), presented at dozens of events across Africa, Asia, Europe and the Americas and translated into two additional languages (Chinese and Spanish).

E. Recommendations for the future

1. Development of operational guidance

82. UNIDROIT should encourage and support relevant industry associations and development institutions to prepare guidance aimed at utilising the MLF to support the creation of effective and scalable factoring markets, specifically addressing how legal reform should interact with capacity building and the development of the factoring market in practice. This guidance could take the form of an operational guide or a practitioner's guide. The guidance could, inter alia, also consider addressing (i) government receivables, particularly the interaction between the MLF and special rules governing the assignment of receivables owed by public authorities, and (ii) the relationship between the Model Law and conventional factoring terminology.

2. Updates to the Digital Economy Supplement

83. Depending on future digitalisation trends, future updates to the MLF Guide to Enactment's Digital Economy Supplement might need to go beyond describing technological developments and identify specific legislative reforms or model provisions needed to support digitalisation.

3. Translations

84. UNIDROIT should continue to move forward with translations of the MLF, as has already been done in Chinese and Spanish, and as is currently in progress in Turkish and Arabic.

4. Updating of the MLST

85. UNIDROIT should consider engaging with UNCITRAL in relation to the differences between the MLST and the MLF, as these could inform an update of the MLST. Such an update is already planned to take place in relation to digital assets, so it would be timely to update the MLST in this regard as well.

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[8] Not only has this been done through the usual UNIDROIT channels but by using others, such as academic and practitioner publications, see, for example, W Brydie-Watson, "The missing piece of the puzzle: the adoption of the UNIDROIT Model Law on Factoring" (2024) JIBFL. See also academic engagement with the MLF, e.g. M. Dubovec and M. Hara, "Factoring Model law: advancing access to finance and promoting financial inclusion" in T. John, R. Gulati and B. Kohler *The Elgar Companion to UNIDROIT* (Elgar, 2024); KAYA, barış. (2024). UNIDROIT Factoring Model Law: Critiques and Possible Effects. *Revista Jurídica Portucalense* , 584–601.

[9] For example, by featuring it at the FCI 55th Annual meeting, see https://fci.nl/en/UNIDROIT-model-law-onfactoring?language_content_entity=en.

[10] See e.g. IFC Knowledge Guide on Factoring Regulation and Supervision (2023).

5. Promotion and implementation prioritisation

86. In order to make effective use the Institute's limited resources for promotion and implementation, in the field of factoring UNIDROIT should prioritise the promotion and implementation of the MLF.

6. Establishment of body to support implementation

87. To support the promotion, implementation and capacity building for the MLF, UNIDROIT should consider establishing a body of interested stakeholders whose main function should be to assist the Secretariat of UNIDROIT in promoting the global implementation of the MLF. Modelled on the "Ratification Task Forces" established for the Cape Town Convention Protocols, this body would comprise interested parties (international organisations, multilateral development banks, financing institutions, private sector associations and legal experts) to serve as a continuous body to support the implementation of the MLF. Possibly linked to the Joint Network, the Task Force could also prepare updates to the MLF Guide to Enactment Digital Economy Supplement.

7. States to target

88. While the MLF is potentially useful for all States whose laws on factoring are not entirely consistent with it, certain States could be identified as those that would benefit the most from the adoption of the MLF, taking into account market size and unrealised factoring potential. Engagement and implementation efforts could then be targeted at those States in particular. It is suggested that such States fall into the following categories.

(a) States with fragmented law

89. This category comprises States whose legal regime on factoring has been subject to piecemeal development or reform, resulting in fragmented, and potentially unclear rules on receivables financing. Such States would benefit from the systematic approach offered by the MLF.

(b) Digital factoring

90. There are many States seeking to develop "digital factoring" practices in order to expand their factoring industries. These practices take a number of forms, including the use of platforms and exchanges to bring together factors and financed parties,[11] and the use of "digital invoices", which may or may not embody the receivable itself.[12] States that wish to encourage, develop and provide for such practices need to know how their existing law can support this development. The MLF, which is designed to be consistent with these developments, can provide a robust legal system to support these technological advances.

(c) Regulation

91. This category of States includes those which have recently passed regulatory reforms for factoring, but whose private law is still underdeveloped, as well as those still considering passing regulatory law in this area. Given the need for a regulation to operate in tandem with a robust private law system, the MLF can be of particular benefit to these States.

(d) States with unreformed law

92. This category comprises States that up till now have not reformed their legal framework governing secured transactions in movable (tangible as well as intangible) property. A bespoke factoring law should be a stepping stone to a future and more general, secured transactions law

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11 See the MLF GtE Digital Economy Supplement paragraphs 17 – 34.

12 See the MLF GtE Digital Economy Supplement paragraphs 3 – 10.

reform. The MLF, being consistent with the MLST, is very well placed to facilitate this process. The category also includes States who have reformed their law consistently with some parts of the MLST but have not included the MLST rules on transfer of receivables.

8. Further engaging the factoring industry and MDBs

93. UNIDROIT should continue to identify and engage with key bodies within the factoring industry: this is probably the most significant way of ensuring that the MLF is considered as a means of economic improvement in States. However, it is also important, if possible, to engage with businesses that generate receivable and that benefit, or potentially benefit, from using those receivables for financing purposes. Such businesses can be hard to identify individually, but can be engaged through trade associations, chambers of commerce etc. Large companies that act as anchor buyers in reverse factoring transactions are also likely to support the implementation of the MLF as they will have an interest in the development of robust legal frameworks to facilitate the financing of their payables and to make their supply chains more resilient. While certain MDBs (such as the WBG and EBRD) have been very active in promoting and providing capacity building for the implementation of the MLF, UNIDROIT could also engage with a broader range of MDBs (such the Asian Development Bank and the African Development Bank) to ensure that the MLF is promoted across the entire globe.

9. Evaluating the implementation of the MLF

94. If UNIDROIT establishes a body to promote the global implementation of the MLF, that body should develop a system for monitoring and evaluating the implementation of the MLF. The evaluation system should distinguish jurisdictions that have adopted or substantially aligned their legislation with the MLF from those in which the MLF has merely influenced the reform process. The establishment of a receivables registry should not be considered sufficient evidence, in itself, of implementation of the MLF. Registries serve different purposes, ranging from priority and transparency to invoice verification, and their design and legal effects could differ significantly from the MLF model. The ultimate evaluation of the success of the MLF should be whether its implementation increased the availability and use of receivables finance in the target jurisdiction.

V. LEASING (1988 CONVENTION, 2008 MODEL LAW, AND PLANNED GUIDE TO ENACTMENT)

A. Development and adoption

1. UNIDROIT Convention on International Financial Leasing (Ottawa, 1988) ("Leasing Convention")

(a) Background

95. UNIDROIT's Leasing Instruments originated in February 1974, during the 53rd session of the UNIDROIT Governing Council. The initiative responded to the significant expansion of leasing practices, driven by aircraft leasing—most notably the Samurai and Shogun Leases facilitated by the Japanese Ex-Im Bank—and the rapid proliferation of leasing companies from the United States to Canada, the United Kingdom, and across Continental Europe. The internationalisation and "multi-nationalisation" of leasing activities were the primary motivating factors.

96. The Leasing Convention was adopted in Ottawa in 1988 and developed through extensive discussions among scholars and jurists representing diverse legal traditions. The objective was to create a balanced legal instrument that would not conflict with common law, civil law, Islamic law, or the law of centrally planned economies. This goal was achieved, as evidenced by the active participation of the USSR in the Diplomatic Conference.

(b) Purpose

97. The Leasing Convention aims to promote international trade and investment by harmonising legal rules and reducing uncertainty in financial leasing arrangements. It is particularly designed to assist countries with developing lease markets by facilitating cross-border transactions through the standardisation of essential aspects of leasing transactions.

(c) Scope and Key Content

98. The Leasing Convention, similar to the Factoring Convention, is applicable only to international financial leasing transactions. It recognises a tripartite relationship in which the lessor, following the lessee's specifications, enters into a supply agreement with the supplier to acquire equipment on terms approved by the lessee; the lessor then grants the lessee the right to use the equipment under a leasing agreement, in exchange for rental payments (Art. 1).

99. The Convention applies when the lessor and lessee are based in different States and either all relevant States are Contracting States or both the supply and leasing agreements are governed by the law of a Contracting State (Art. 3).

100. Key objectives of the Leasing Convention include transferring responsibility for equipment's nonconformity from the lessor to the supplier (Arts. 8, 10-12); limiting the lessor's liability to third parties; protecting the lessor's property interest in the event of the lessee's insolvency (Art. 7); and providing remedies for the lessor in case of the lessee's default (Art. 13).

(d) Impact

101. The adoption of the Leasing Convention in 1988 resulted in a limited number of ratifications, with only 10 countries adopting the Convention out of the 56 represented at the Diplomatic Conference. At the time of its adoption, cross-border leasing transactions were relatively rare, and the Convention's scope was relatively modest. Additionally, most cross-border leasing agreements were governed by detailed private contracts, which diminished the perceived need to apply the Convention.

102. Despite its limited international adoption, the Leasing Convention significantly influenced domestic developments, serving as a model for tripartite cross-border leasing transactions in some countries (e.g., Panama and El Salvador) which used the Convention as a model for their domestic leasing laws. The Leasing Convention also laid the groundwork for UNIDROIT's Model Law on Leasing, developed 20 years later.

2. Model Law on Leasing (2008) ("MLL")

(a) Background

103. Building on the successful negotiation of the Leasing Convention and the Cape Town Convention and its Protocols, UNIDROIT began discussions on the Model Law on Leasing (MLL) in 2006, following a proposal by the International Finance Corporation (IFC) of the World Bank Group.

104. The MLL was developed with input from UNIDROIT's Advisory Board, IFC experts, and industry associations, particularly those working on commercial law reform in developing and transition economies.

(b) Purpose

105. The IFC highlighted the need for a modern legal framework to encourage foreign investment in lease financing within emerging markets. Accordingly, the MLL's preamble reaffirms its purpose to provide a flexible legal framework for a wide range of leasing activities, especially targeting developing countries and small and medium-sized enterprises.

(c) Scope and Key Content

106. The MLL incorporates the fundamental concepts adopted in the Leasing Convention, updating them to reflect modern business practices. However, the focus shifted from the regulation of cross-border leasing transactions to the adoption of national law perspectives on leasing, making the MLL UNIDROIT's first soft law instrument in the field of access to credit.

107. The MLL covers both "financial leases" (where ownership may transfer to the lessee at the end of the lease) and "operational leases" (where the lessor retains ownership and the lessee uses the asset for a set period in exchange for payments). The MLL applies if the equipment is located in the enacting State, if the lessee's main interests are based there, or if the leasing agreement stipulates that the State's law governs the transaction (Arts. 1-2).

108. MLL provides tailored legal rules for leasing practices, including:

- The tripartite nature of leasing agreements, involving the supplier as a key stakeholder with defined rights and remedies, assuming only passive liability for equipment deficiencies or non-conformity.
- The unconditional obligation of the lessee to make lease payments, reflecting the financial structure and purpose of amortising the lessor's investment.
- Clear allocation of liability to the lessee for all issues related to the operation and use of the equipment, including traffic violations, environmental damage, and tort liability.
- The lessor's expedited right to repossess the asset upon lessee default, with some countries combining MLL provisions with other efficient remedies such as direct payment and repossession without court intervention.
- Assignability of lease receivables by the lessor without restrictions, while substitution of the lessee is subject to specific rules recognising the personal nature of the lease.

109. The lessor's rights prevail over the leased goods in the event of lessee insolvency. This feature is in line with insolvency laws inspired by the UNCITRAL Legislative Guide on Insolvency Law, allowing lessors to receive priority rental payments or repossess the asset as needed.

110. These features prompted some jurisdictions to base their leasing laws on the MLL.

111. Where enacted, the MLL fills gaps in private contracts, providing general principles and default rules to support private practice. It also clarifies the allocation of roles and liabilities of the supplier, the lessor, and the lessee, particularly regarding tort liability from the use of leased assets, which could otherwise lead to complex litigation between third parties, lessors, and lessees. The MLL can also provide important property law protections for parties that cannot be achieved through contracts.

(d) Impact

112. Numerous countries have enacted leasing laws based on the MLL. According to recent UNIDROIT Secretariat reports, the MLL has been implemented in several countries across different regions (e.g., Guatemala, Tanzania, and the United Arab Emirates). Other jurisdictions are currently in the process of implementing the MLL.

113. Private sector and political support for leasing laws remain limited. This is partly due to a lack of awareness of the needs of the leasing industry and also because the ample spectrum of party autonomy has made formal adoption of leasing laws less necessary in some jurisdictions. Chile, for example, has a thriving leasing industry without a specific leasing law, relying on sound contractual practices and effective legal interpretation by the courts.

(e) Engagement

114. Adoption of the MLL or ratification of the Leasing Convention requires legislative action in each country. Legislators play a critical role, but their involvement depends on demand from their constituents, making active private sector engagement essential.

115. Effective private sector engagement requires robust capacity-building efforts, starting with basic legal education. Yet, leasing law is not part of standard law school curricula, except occasionally in graduate specialised courses focusing on asset-based financing. Training workshops for lawyers and judges on the legal aspects of leasing are also relatively uncommon.

3. Development of a Guide for Enactment for the UNIDROIT Model Law on Leasing

116. At its 98th session in May 2019, the UNIDROIT Governing Council approved the development of a Guide to Enactment for the MLL ("MLL GtE") as a low-priority project for the Institute's 2020-2022 Work Programme, based on a proposal by the World Bank. At its 105th session in Rome (May 2025), the Council maintained the MLL GtE as a low-priority project for the 2026-2028 Work Programme.

117. The MLL Guide to Enactment remains on UNIDROIT's agenda, as implementing States may require additional guidance to understand how the methods for making leasing transactions effective against third parties under the MLL interact with the registration requirements under the Cape Town Convention and its Protocols. It was believed, at the time of adoption of the Model Law, that there could be some potential priority conflicts between the lessor's right under the MLL and the comprehensive statutory framework of security rights provided by legislation based on the OAS Model Law on Secured Transactions and the UNCITRAL Model Law on Secured Transactions. In practice, there are many States that apply a version of the MLL alongside a comprehensive secured

transactions regime, where both laws complement each other. It is therefore suggested that the GtE recommend this approach, irrespective of the seemingly contrary position under MLL Art. 3(1).

B. Recommendations for the Future

1. Development of the Guide to Enactment

118. UNIDROIT should ensure that the MLL Guide to Enactment is eventually adopted, as the need for this additional instrument remains. The Guide to Enactment should, inter alia, provide guidance on (i) coordination between secured transactions and leasing law, (ii) the appropriate scope for leasing legislation, (iii) the relationship between the MLL and the Cape Town Convention and its MAC Protocol, (iv) enforcement of remedies, and (v) regulatory and tax issues.

2. Promotion and implementation prioritisation

119. In order to effectively utilise the Institute's limited resources for promotion, implementation, and capacity building, in the field of leasing UNIDROIT should prioritise the promotion and implementation of the MLL.

3. Capacity building

120. With the support of UNIDROIT and stakeholders such as the World Bank, a comprehensive capacity-building program should be implemented to foster understanding and adoption of leasing laws. Access to finance requires not only the use of domestic resources but also the possibility for all markets, especially developing countries, to get access to capital from foreign lessors. While stimulating the expansion of the leasing business by domestic players, the advantages of a legal system that adopts MLL can also be attractive for foreign investors. The combination of internationalisation and muti-nationalisation of global trade are needed to provide access to finance on a global basis.

VI. AGRICULTURAL FINANCE (2024 MODEL LAW ON WAREHOUSE RECEIPTS AND GUIDE, AND FUTURE LEGAL GUIDE ON AGRICULTURAL FINANCING)

A. Development and adoption

121. The joint UNCITRAL-UNIDROIT Model Law on Warehouse Receipts (MLWR) was developed over a three-year period (2020-2023) under a working group led by UNIDROIT. The draft MLWR and its Guide to Enactment were submitted to UNCITRAL Working Group I, which completed two readings and recommended adoption at UNCITRAL's 57th session. The UNIDROIT Governing Council approved the text of the MLWR on 8 May 2024 at its 103rd session in Rome. UNCITRAL adopted the MLWR on 26 June 2024 at its 57th session in New York. The instrument is complemented by a Guide to Enactment, including an article-by-article commentary and implementation guidance.

122. Additionally, UNIDROIT has included the Agricultural Financing Legal Guide in its 2026-2028 Work Programme as a high-priority project, with involvement from the World Bank Group, the Food and Agriculture Organization of the United Nations (FAO), and International Fund for Agricultural Development (IFAD).

123. Earlier related international legal instruments adopted by UNIDROIT on agricultural development and private law (e.g., the Legal Guide on Contract Farming, the Legal Guide on Agricultural Land Investment Contracts (ALIC)) laid the groundwork and stakeholder base for the need to develop an Agricultural Financing Legal Guide. Stakeholder consultations played a significant role in the adoption of the Legal Guide on Contract farming and ALIC Legal Guide. For instance, as part of the ALIC project, online and regional consultations were held between 2019-2020 to collect input from governments, civil society, investors, academics and tenure-rights holders. Recently, the UNIDROIT/FAO/IFAD project on the Collaborative Legal Structure of Agricultural Enterprises (CLSAE) has been facilitating the development of a legal guide on collaborative legal structures to support smallholders and agri-MSMEs.

124. The MAC Protocol was adopted in November 2019 as the fourth Protocol to the Cape Town Convention, with the specific purpose of extending the treaty system's operation to mining, agricultural and construction equipment. Under the MAC Protocol, "agricultural equipment" is defined by reference to HS codes listed in Annex 2 to the MAC Protocol, including tractors, ploughs, harvesters, seeders, sprayers, balers, and other farm machinery, including attached accessories and parts. The development, operation, implementation and recommendations concerning the MAC Protocol are set out in Part III of this White Paper.

125. While the Legal Guide on Contract Farming, the ALIC and the UNIDROIT/FAO/IFAD CLSAE project are relevant to the broader agricultural development framework of UNIDROIT and they are demonstrating continuous impact, the focus of the section of this white paper is not on these instruments but rather on the MLWR, the Agricultural Financing Legal Guide and future reforms and recommendations pertaining to agricultural financing.

B. Purpose

126. The UNCITRAL-UNIDROIT Model Law on Warehouse Receipts (MLWR): The MLWR aims to create a clear, harmonised legal framework for paper- or electronic-based warehouse receipt systems, governing their issuance, transfer, pledge, and use as documents of title. It allows stored agricultural commodities to serve as collateral, thereby facilitating access to credit for farmers and agribusinesses. The MLWR is asset agnostic and generally applies to all ordinary inventory, although domestic warehouse receipt laws are often asset specific. The MLWR also standardises warehouse receipt practices across jurisdictions, reduces financing costs and risks, increases lender confidence, and

promotes improved storage, better commodity trading, and more accurate market timing for producers.

127. Future Legal Guide on Agricultural Financing: It is intended to offer a comprehensive, coherent framework for agricultural-sector finance, consolidating legal guidance on the various forms of finance used across the agricultural supply chain into a single instrument. Its purpose will be to catalogue and describe the range of commonly used financing transactions, from asset-based lending, leasing, and crop receipts to stock-in-trade and commodity financing, especially for jurisdictions where legal structures remain underdeveloped.

C. Key content

128. The MLWR regulates the transfer and other dealings in warehouse receipts that are negotiable, enabling them to be transferred or used as collateral. It imposes obligations on the warehouse operator, e.g., storage, record-keeping, and notification, as well as liability for defaults, to protect the interests of receipt-holders. The MLWR also provides for pledge bonds as an optional feature, an instrument that, in a "dual-receipt system", gives a holder a security right in the goods covered by the warehouse receipt, enabling access to affordable credit. The MLWR is designed to be medium- and technology-neutral, meaning it accommodates both paper and electronic systems, allowing modern platforms, registries, or ledger-based systems to support warehouse-receipt operations.

129. Legal Guide on Agricultural Financing: The Guide aspires to support the broader development of a stable, inclusive, and efficient agricultural finance ecosystem. It is proposed that it will accommodate a variety of financing tools (leasing, factoring, warehouse/commodity-backed finance, equipment financing) and explain the interaction between the different international legal instruments regulating these different financing tools. In doing so, it is anticipated that the Legal Guide will reduce risk, promote investment, and strengthen links across the production, storage, trade, and financing of agricultural produce.

D. Impact

130. The MLWR was adopted in 2024, therefore at present no country has formally enacted the Model Law itself. Instead, it is designed as a template for countries that want to modernise or introduce warehouse receipt legislation.

131. The Agricultural Financing Legal Guide is yet to be drafted and therefore its impact cannot be assessed.

E. Recommendations for the Future

1. Development of an Operational Guide for the MLWR

132. While UNIDROIT primarily develops instruments focusing on private law reform, the effective operation of the MLWR will also depend on the presence of appropriate institutional and administrative arrangements within implementing jurisdictions. In practice, these enabling conditions resemble those typically addressed in implementation-oriented resources which assist States in translating legal rules into functioning domestic systems. For this reason, UNIDROIT, in collaboration with UNCITRAL, could consider encouraging and supporting the development of a "MLWR Operational Guide" to support technical assistance with respect to the supervision of warehouses and entities participating in warehouse receipt financing systems.

133. The Operational Guide would not constitute a new legal instrument or prescribe legislative reforms; rather, it would provide non-binding, practical guidance designed to facilitate the

operationalisation of the MLWR. It would best be developed by organisations with significant resources dedicated to capacity building in relation to agricultural finance, such as IFAD, FAO or one of the multilateral development banks, in partnership with UNIDROIT and UNCITRAL.

134. An Operational Guide could also offer technical guidance to public authorities and warehouse receipt supervisors on matters such as licensing and accreditation of warehouses, insurance requirements, operational standards (including storage conditions, record-keeping, and segregation of goods), inspection and audit procedures, reporting obligations, sanctions and withdrawal of licenses, and coordination with electronic warehouse receipt platforms and secured-transactions registries. Importantly, the operational guide should also incorporate capacity-building components, including guidance on institutional training, modern warehouse supervisory methods, and knowledge-sharing mechanisms, recognising that many jurisdictions seeking to implement warehouse receipt systems may lack specialised expertise in this area. By strengthening institutional capacity alongside corporate practices, the Operational Guide would help ensure that the MLWR functions effectively in practice.

2. Inclusivity in the development of the Agricultural Financing Legal Guide

135. As consistent with UNIDROIT's established practice, the Agricultural Financing Legal Guide should be developed in an inclusive manner, including international legal experts, international organisations, multilateral development banks, private sector associations and academia. The group of experts should include not only FAO and IFAD, but also UNCITRAL and the Hague Conference on Private International Law (HCCH). This collaboration would be logical given UNCITRAL's long-standing track record in developing access to finance instruments, particularly in secured transactions and trade finance. Similarly, the HCCH could contribute expertise on private international law and cross-border legal coordination, which is increasingly relevant for agricultural trade and supply financing.

3. Content of the Agricultural Financing Legal Guide

136. The Agricultural Financing Legal Guide should reflect the full lifecycle of agricultural production and the diversity of financing mechanisms that operate within it. Agricultural financing does not occur at a single point in time; rather, it spans several stages of the agricultural value chain, each characterised by different risks, assets, and financing structures. For this reason, the Legal Guide should adopt a holistic and value-chain-oriented approach, demonstrating how legal frameworks can support (i) financing before production begins (pre-harvest finance), (ii) financing during production, (iii) post-harvest and inventory finance, (iv) equipment and infrastructure financing, and (v) broader contract farming and receivables-based supply chain finance.

137. The Legal Guide should also recognise the growing importance of integrated value-chain finance, where multiple financing instruments operate together. In practice, agricultural financing structures often combine secured lending, leasing, factoring, and guarantees, sometimes within cooperative or platform-based systems that aggregate farmers and reduce risk. In addition, blended public-private financing models, involving development finance institutions, governments, and private lenders, are increasingly used to mobilise capital for agricultural development. Further, the financing of innovative business models and sophisticated contracting practices, including advanced servitisation, are relevant. Addressing these interconnected forms of financing within a single framework under the Legal Guide will provide policymakers with a comprehensive roadmap for designing legal regimes that support agricultural finance across the entire value chain. This integrated approach would help ensure that legal reforms do not address individual financing mechanisms in isolation but instead foster a coherent ecosystem that expands access to finance for farmers, agribusinesses, and rural economies.

4. Development of a Model Law on Crop Receipts

138. Following the publication of the ILI – IFC Knowledge Guide on Crop Receipts Finance, UNIDROIT may wish to consider developing a Model Law on Crop Receipts. While the Knowledge Guide provides policy insights and reform initiatives for crop receipts financing in general, a UNIDROIT Model Law on Crop Receipts would provide a normative private-law framework to assist States interested in introducing new legislation. The Model Law could address issues such as creditor rights, transferability, registries, and enforcement.

139. The development of a Model Law on Crop Receipts would be important for several reasons. First, agricultural production is inherently seasonal and risky, which makes conventional lending difficult. Crop receipt financing offers a structured method for financing production while aligning repayment with the harvest cycle. Second, the instrument can significantly expand financial inclusion for smallholder farmers, many of whom operate outside formal credit systems. Third, crop receipts can strengthen value-chain financing, linking farmers, input suppliers, traders, and financial institutions through structured contractual arrangements. Finally, the absence of clear legal frameworks governing crop receipts in many jurisdictions creates uncertainty for lenders and investors.

140. The gap in the international legal framework in relation to best practice crop receipts legislation has already been identified during the preliminary work undertaken in relation to the development of the UNIDROIT Agricultural Finance Legal Guide. The ILI and the World Bank Group have already expressed support for UNIDROIT developing such an instrument. Given the clear synergies between the development of a proposed Model Law on Crop Receipts and the already initiated project to develop an Agricultural Finance Legal Guide, it is suggested that the two instruments could be developed by a Working Group constituted of the same legal experts and institutional partners.

VII. CROWDFUNDING (FUTURE MODEL LAW OR LEGAL GUIDE ON LEGAL AND REGULATORY ASPECTS OF INVESTMENT-BASED CROWDFUNDING)

A. Background

1. Crowdfunding and access to credit

141. Crowdfunding has recently gained popularity as a way to diversify financing sources, particularly during periods of economic crisis where traditional financiers act with caution and are reluctant to provide funds in reasonable conditions. It has been perceived as an alternative financing method to mitigate the effect of excessive bank dependency in periods of economic instability. Crowdfunding has thrived in some markets as a financing alternative (mainly but not exclusively) for small companies, innovative projects, and start-ups (SMEs). In some economies, crowdfunding improves financial inclusion by providing financial services to individuals or businesses unserved by traditional financial intermediaries, and frequently unbanked populations. Therefore, a robust framework for well-functioning crowdfunding platforms may be a key component of financial-inclusion-enhancing policies and initiatives.

2. Crowdfunding and financial dis-intermediation/re-intermediation

142. Crowdfunding platforms and service providers initially represented a process of financial disintermediation. Funders and project promoters seek funds outside the traditional financial flows and financial markets. Hence, crowdfunding has been viewed and interpreted as a disintermediation phenomenon, within a broader trend towards peer-to-peer models and sharing-economy businesses. Disintermediation raises several questions, including (i) whether crowdfunding operators (service providers, platform operators) are or, if not, should be treated as financial intermediaries, (ii) whether crowdfunding operators and services do or should fall under the perimeter of financial regulation and supervision, and (iii) as a consequence, whether funders are protected by the safeguards and protections provided for by the law/regulation for investors.

143. After an initial period of under-regulation, financial regulations have started to provide for rules governing crowdfunding platforms/operators/service providers, crowdfunding-related contracts, or activities. That trend reinforces the idea that crowdfunding is not a process of financial disintermediation but one of the phases in an ongoing cycle of disintermediation-reintermediation.

144. Crowdfunding platforms/operators/service providers do in fact, act as intermediaries in the market. This is not to say that they should be treated from a regulatory/legal perspective as financial intermediaries, but from an economic point of view, they act as digital and economic intermediaries in the market. Accordingly, their role in access to credit and equity financing is crucial.

3. Crowdfunding and technology

145. Crowdfunding is not a new phenomenon. It simply embodies, through modern technological innovations, long-standing mechanisms for collecting funds from the public. Technology has accelerated and expanded their penetration in the market with more sustainable, and successful business models.

146. Today's crowdfunding is highly dependent upon three technological components that define its concept, operation, and features. First, crowdfunding through digital platforms provides network effects, economies of scale, and data aggregation. Second, automation driven by artificial intelligence (AI) has allowed automated functionalities in relation to recommender systems, sophisticated search engines, comparators and aggregators, rating and rankings, personalising strategies. Third, the development of the data economy has facilitated mass data collection, processing, and management, which are instrumental to the modern crowdfunding. From personalisation to prediction or

recommendation, crowdfunding value-added services are based on data processing (provided data, observed data, inferred data).

147. Hence, this White Paper suggests that UNIDROIT's work in this field should target crowdfunding platforms, to ensure that the premises and the solutions are fit-for-purpose (and as further suggested below, investment crowdfunding platforms).

148. As explained below, opting for platform-based crowdfunding has significant legal implications.

B. Recommendations

149. As the new Crowdfunding instrument has yet to be developed, this White Paper's recommendations relate to matters regarding the nature of the instrument, its scope and content.

1. Nature of the instrument to be developed

150. It is yet to be determined whether the project should aim to develop, on the one hand, a comprehensive legal guide on crowdfunding as an alternative financing route referring to existing relevant regulatory and legislative elements that may apply, without aiming to provide for legal reform or harmonised legal solutions; to, on the other hand, providing a set of uniform legal rules (model legislative provisions) for crowdfunding (including or alternatively recommending, if so agreed, model contractual terms for platform operators). The decision on the preferable type of instrument to be developed should be delayed until the expert Working Group has been convened and has had an opportunity to review the range of legal issues that the instrument would need to address.

2. Title of instrument and definitional issues

151. Crowdfunding as a general concept can include both "non-financial crowdfunding" (donation or reward-based crowdfunding) as well as "financial crowdfunding", where the funder receives a financial benefit (interest, dividends, or shares in benefits), encompassing both credit-based crowdfunding or equity-based crowdfunding, or mixed typologies. The future project will need to carefully determine its scope in relation to different typologies of crowdfunding, and should address at least credit and equity-based crowdfunding (and preferably including hybrid models entailing a financial benefit). On this basis, it may be necessary to review the title of the project, as "investment-based crowdfunding" might be seen to indicate that the project is limited to equity-based crowdfunding. The project will also need to consider whether to include sector-specific crowdfunding, noting particular issues around real estate crowdfunding.

3. Treatment of regulatory issues

152. Crowdfunding platforms raise both public-law and private-law issues from taxation to liability, from systemic risks in financial markets to consumer protection, from discrimination to breach of contract. Although all these areas often intermingle and mutually interact, UNIDROIT's contribution to the future project should focus on the private law aspects. The World Bank Group may wish to focus on the regulatory aspects. In particular, the future instrument might need to address protections for both consumers and retail investors. Person to Person (P2P) crowdfunding raises the question of whether there is a "weak party" to protect in the funding relationship, but the relationship between the platform users (funders and project promoters or funded party) and the platform operators can be in many cases a business-to-consumer (B2C) transaction. It should be noted that in some jurisdictions, the relationship between the platform operator and the professional user has been deemed to be asymmetric and specific protection rules have been adopted, see EU P2B Regulation, Regulation (EU) 2019/1150).

4. Parties involved in crowdfunding

153. In principle, it is expected that the future project will focus on the contracts between the parties involved in a Crowdfunding model (platform operator, funder, funded party). Contract-related aspects include liability scenarios and rules and protection measures. However, the project will also need to consider other actors who are involved, and the project should acknowledge their role and address specific issues (rating agencies, escrow agents).

(a) Crowdfunding platform operators

154. The project should consider the legal nature of the platform operator (whether it be a financial intermediary, digital intermediary, commercial agent, custodian, financial advisor, etc). In making this determination, the functions performed by the crowdfunding platform will need to be taken into account (for example, whether the platform operator provides liquidity, receives or holds funds in custody, rates the funded parties, provides personalised financial recommendations, provides other value-added services, provides security or guarantees, or provides dispute resolution mechanisms). The project will also need to consider both centralised platforms and possibly digital ledger technology (DLT) and decentralised autonomous organisation (DAO) models. The project should also consider the applicability of specific regulations to platform operators, such as EU DMA Regulation - (EU) 2022/1925 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) imposing obligations to designated gatekeepers, as well as whether general obligations platforms are subject to in some jurisdictions are adequate for crowdfunding platforms and sufficient to protect funders and funded parties (such as EU DSA (Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

(b) Funders

155. The project should consider whether funders act with a professional purpose or a personal purpose, whether they are treated as lenders and shareholders and whether they can exercise their rights as lenders or shareholders or any limitations set out in the agreement with the platform or the funded party.

(c) Funded parties

156. The project should consider, *inter alia*, whether funded parties are individuals or companies (SMEs, start-ups, others), and whether company-law or contract-law rules in the domestic law limit access to crowdfunding or the conditions agreed upon.

5. Contracts between different parties

157. The project should consider contractual elements between the platform operators and users (P2U contracts), including the analysis of the obligations of the platform operator, liability waivers and limitation clauses and applicable law. The project should also consider contracts between the funder and funded party, which can follow typified or non-typified agreements for lending or investment purposes (such as a loan agreement), with specific consideration of whether the parties are on equal terms or there are asymmetries to be addressed and whether these contracts included clauses that are not permitted or depart from national laws, but they are enforced on the platform and pursuant to the platform rules.

6. Technology-related aspects

158. While not favouring specific technology approaches, the project should consider several legal issues associated with technology-driven functionalities of crowdfunding. These include (i) legal implications of automating parts of the contracts between the funder and funded party, (ii) the legal

implications of technology-enabled remedies that are triggered automatically on default, (iii) legal implications (contractual breach, civil liability, defective product, incorrect advice, legal infringement) related to AI-driven functionalities provided by the platform (e.g. (rating, recommender system, pricing mechanisms, adjustments of conditions), and (iv) aspects related to tokenisation campaigns in crowdfunding platforms.

7. Other legal issues to be considered

159. The project should also consider a range of legal issues associated with the operation of crowdfunding, including (i) liability of the platform operator: cases, rules, and liability exemption/limitation clauses, (ii) liability of the parties for false or inaccurate information, (iii) intermediary vehicles created to help small, funded parties to manage a high number of crowdfunders, (iv) obligations of the funded party to pay, reimburse, or return, (v) rights of the funder including contractual modifications or limitations of rights provided for by the law (voting rights, economic rights, participation in benefits), (vi) exit clauses, (vii) protection in cases of default and insolvency, and (viii) specific rules applicable to funded party's corporate governance and shareholders' agreements.

VIII. FINAL RECOMMENDATIONS AND CONCLUDING REMARKS

160. This White Paper has identified 56 recommendations for UNIDROIT to consider in relation to its work in the field of access to credit, including (i) 32 recommendations for asset-based finance, (ii) 10 recommendations for factoring and receivables finance, (iii) three recommendations for leasing, (iv) four recommendations for agricultural finance and (v) seven recommendations for crowdfunding. These recommendations relate to a very broad range of activities, including the development of complementary information and guidance, the formation of new bodies to support promotion, implementation and capacity building, improved coordination with partner organisations and stakeholders, and future substantive issues that might warrant further consideration. While it is acknowledged that UNIDROIT will not be able to undertake all of the proposed recommendations simultaneously without dedicating significantly more resources to its access to credit work, the Access to Credit Workstream Committee hopes that these recommendations will provide a blueprint for possible future activities.

161. The Committee has three final general recommendations for UNIDROIT unrelated to any specific sub-category:

Recommendation 1: Prioritise implementation of existing instruments over the development of new legal standards

162. UNIDROIT has already developed 12 instruments in the field of access to credit (Conventions, Protocols, Model Laws, Guides to Enactment and Legal Guides), with six additional instruments already under negotiation or in the pipeline. Aside from the six additional instruments already included in UNIDROIT's Work Programme[13], the Committee recommends that UNIDROIT prioritise the promotion and implementation of, and support for capacity building in relation to the existing instruments before developing more new instruments. As the specific recommendations in this White Paper set out, much more can be done to improve the impact of existing instruments, in order for them to reach their full potential.

Recommendation 2: Continued broad and inclusive cooperation with stakeholders

163. Many of the Committee's implementation recommendations relate to coordinating with target groups or partner institutions in relation to specific instruments. More broadly, the Committee recommends that UNIDROIT continue to engage and coordinate broadly with stakeholders in the formulation, negotiation, promotion, implementation and for capacity building in relation to UNIDROIT instruments in the field of access to credit. The success of these instruments requires the participation of not only legal experts, but also partner international organisations, multilateral development banks, private sector associations, regulatory bodies, government officials and academia. UNIDROIT's open and collaborative approach to involving relevant stakeholders in its work should be applauded and maintained. In the field of access to credit, UNIDROIT's continued engagement with the Joint Network for the Coordination of Secured Transactions Reforms remains the most important body to achieve this objective.

Recommendation 3: Coordination with sister organisations

164. UNIDROIT has a strong history of successful coordination with both UNCITRAL and the HCCH across all of its work, including in the field of access to credit. This coordination remains essential for ensuring the development of a harmonised international legal framework for access to credit. The Committee recommends that UNIDROIT continue to coordinate carefully with both UNCITRAL and the

[13] (i) the Maritime Protocol, (ii) the Renewable Energy Protocol, (iii) the Aircraft Protocol Procedural Law, (iv) the Model Law on Leasing Guide to Enactment, (v) the Agricultural Finance Legal Guide, and (vi) the Investment Based Crowdfunding Instrument.

HCCH. One important objective in this regard would be to update the Joint Publication on Secured Transactions Law, to take into account the plethora of new instruments in the field of access to credit that have been adopted by all three organisations since 2012.