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ISSUES PAPER

1. This document provides a discussion of issues that the Factoring Model Law Working Group (Working Group) may wish to consider at its fourth session.

2. This Issues Paper has been restructured as compared to previous MLF Issues Papers:

i. Part I provides updates on intersessional work undertaken on the Model Law on Factoring (MLF) project, in particular (a) the intersessional meeting on scope, (b) the subgroup on registration and (c) the subgroup on transition.

ii. Part II provides further analysis on issues that have not yet been resolved.

iii. Part III provides analysis on issues where policy consensus has been achieved. Please note that issues in Part III may still require further consideration in relation to how the draft MLF itself implements the policy decisions made by the Working Group or how they will be dealt with in the Guide to Enactment.

iv. Part IV provides general information on the MLF project that does not require specific consideration by the Working Group (aside from Section Y on the title of the instrument, which may require further Working Group discussion).

3. This issues paper should be considered in conjunction with the preliminary draft Model Law on Factoring (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 3) and the Comparison Table (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 4).

4. The Secretariat is grateful to Mr Marek Dubovec (Kozolchyk National Law Center, 'NatLaw') for his assistance in the preparation of this document.

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I. UPDATES ON INTERSESSIONAL WORK

A. Intersessional Meeting on Scope

5. In advance of the Working Group's fourth session, a restricted intersessional meeting was held on 20 September 2021 to allow Working Group members to further consider the MLF's scope. The intersessional meeting had two objectives:

i. Decide on the MLF's general approach to scope (whether the MLF should adopt a broad scope with exclusions or a narrower defined scope).

ii. Further consider whether to include certain types of receivables within the scope of the MLF.

6. The outcomes from the intersessional meeting on scope were as follows:

General approach to scope

1. Following extensive discussions, the Working Group decided to provisionally include a narrow definition of 'receivable' in Article 2 of the preliminary draft MLF.

Scope issues related to the type of receivable

2. The Working Group decided that receivables arising from a contract for the sale or lease of immovable property should not be included within the scope of the MLF.

3. The Working Group decided that the MLF should apply to contractual receivables, and thus would not apply to non-contractual receivables such as tort receivables and tax receivables.

4. The Working Group decided that the MLF would apply to medical receivables and that medical receivables would fall within the narrower definition of 'receivable' adopted on the basis that they would be a payment right arising from the provision of a service.

5. The Working Group briefly discussed financial receivables excluded by Article 4(2) of the Receivables Convention, but did not reach a conclusion on their inclusion or exclusion. It was noted that most financial receivables would be excluded automatically through the narrower definition of 'receivable' adopted by the Working Group.

General Approach to Scope

7. The scope of the MLF is defined through a combination of the scope provision in Article 1 and the definition of 'receivable' in Article 2 of the preliminary draft MLF (as reflected in the preliminary draft Model Law in UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 3):

Article 1 — Scope of application

1. This Law applies to [transfers/assignments] of receivables.

2. [Application to proceeds – to be discussed.]

3. Nothing in this Law affects the rights and obligations of a transferor or a debtor under other laws governing the protection of parties to transactions made for personal, family or household purposes.

4. Nothing in this Law overrides a provision of any other law that limits the transfer of specific types of receivable.

5. Nothing in this Law affects the rights and obligations of any person under the law governing negotiable instruments.

Article 2 — Definitions

1. For the purposes of this Law:

(-) "Receivable" means a contractual right to payment of a sum of money:

(i) Arising from a contract for the supply or lease of goods or services [other than a contract for the sale or lease of immovable property]

(ii) Arising from a contract for the sale, lease or licence of industrial or other intellectual property or proprietary information; or

(iii) Representing the payment obligation for a credit card transaction.

8. By adopting a more limited definition of 'receivable', the MLF avoids the need for a long list of exclusions to its scope which might deter some implementing States. However, it should be noted that at the intersessional meeting, some Working Group members expressed a preference for a broader definition of receivable based on the MLST with a list of excluded receivables.

Specific scope issues

9. The text box below summarises the decisions made by the Working Group in relation to whether specific types of transfers and receivables should be included or excluded from the scope of the MLF. Each of these matters is explored in more detail in the following paragraphs.

Receivables

1. The MLF will apply to the transfer of the following types of receivables:

    a. Contractual payment rights

        i. Contracts for the supply or lease of goods or services.

        ii. Contracts for the sale, lease or licence of industrial or other intellectual property.

        iii. Payment obligation for a credit card transaction.

    b. Consumer receivables

2. The MLF will not apply to the following types of receivables:

    c. Non-contractual receivables.

    d. Contracts for the sale or lease of immovable property.

Transfers

3. The MLF will apply to the following types of transfers:

    i. Collection only-transfers.

Contractual payment rights

10. At the intersessional scope meeting, the Working Group decided that the definition of ‘receivable’ in Article 2 of the MLF should be limited to a ‘contractual’ right to payment of a sum of money. This is consistent with the definition of ‘receivable’ in Article 2(a) of the Receivables Convention (‘contractual right to payment of a monetary sum’). The MLF definition of ‘receivable’ further restricts its scope to receivables arising from (a) a contract for the supply or lease of goods or services, (b) arising from a contract for the sale, lease or licence of industrial or other intellectual property or proprietary information or (c) representing the payment obligation for a credit card transaction.

11. Non-contractual payment rights (tort receivables and tax receivables). In limiting the scope of the MLF to contractual rights to payment, non-contractual receivables such as tort receivables and tax receivables are excluded from the MLF. At the intersessional meeting on scope, the Working Group decided that, while tort receivables might be financed, they are not typically part of factoring relationships and should not be included. In relation to tax receivables, the Working Group decided that, while there would be no harm in their inclusion, they should not be expressly provided for as an exception to the MLF limiting its application to contractual rights to payment.

12. Receivables arising from a contract for the supply or lease of goods or services. This restriction is generally consistent with Article 1 of the Factoring Convention[1] and Article 9(3)(a) of the Receivables Convention.[2] Medical receivables: At the intersessional meeting on scope, the Working Group decided that, from a policy perspective, the MLF should apply to medical receivables. As medical receivables are a contractual right to payment arising from a contract for the supply of medical services, they fall within the definition of "receivable" in Article 2, thereby including them within the scope of the MLF without the need for an explicit provision.

13. Receivables arising from a contract for the sale, lease or licence of industrial or other intellectual property.[3] This language is based upon Article 9(3)(b) of the Receivables Convention.

14. Receivables representing the payment obligation for a credit card transaction.[4] This language is based upon Article 9(3)(c) of the Receivables Convention.

Immovable property

15. The definition of 'receivable' in Article 2(1) of the preliminary draft MLF provides that a 'receivable' is a contractual right to payment of a sum of money 'Arising from a contract for the supply or lease of goods or services [other than a contract for the sale or lease of immovable property]'. The bracketed text reflects the language used in the corresponding provisions in the MLST and the Receivables Convention.

16. At the intersessional meeting on scope, the Working Group agreed that, land-related rights to payment would not generally be considered as 'factoring' and should not be included in the MLF. However, the Working Group also identified a number of characterisation issues in relation to immovable property that might cause complications for implementing States:

i. A hotel might wish to factor receivables arising from clients who have booked hotel rooms. If these types of receivables were considered as receivables arising from the provision of services, they would be within the scope of the MLF. However, if these receivables were considered to arise from a contract for the lease of immovable property, then they would not be within the scope of the MLF.

ii. A company may wish to factor receivables arising from the leasing of a crane. Normally, the factoring of receivables from the leasing of an object like a crane would be considered as receivables arising from the leasing of a good. However, a crane on a building site would become associated with immovable property in some jurisdictions and, as such, receivables arising from the leasing of that crane could be considered as receivables arising from the lease of immovable property.

17. The Working Group suggested that the Guide to Enactment could identify this issue to allow implementing States to ensure that the interaction between their new factoring legislation and domestic laws on immovable property would not create any unintended or undesirable outcomes.

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[1] Article 1(2)(a) of the Factoring Convention limits its operation to receivables arising from contracts of sale of goods and Article 1(3) provides that references to 'goods' shall include 'services'.

[2] Article 9(3)(a) of the Receivables Convention limits the anti-assignment clause override in Article 9(1) to the assignment of receivables arising from a contract for the supply or lease of goods or services.

[3] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paragraph 18.

[4] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paragraph 19.

Collection-only transfers

18. The MLF will apply to transfers of receivables for the purposes of collection-only.[5] During Working Group discussions, it was noted by the Factors Chain International (FCI) that collection-only transfers from an export factor to an import factor was an important aspect of international factoring and should not be excluded from the MLF. The transfer of the receivables could be considered as 'collection-only', as the import would not be liable for the default risk of the debtor.

19. UCC Article 9 excludes an assignment of receivables for the purpose of collection-only whereas the Receivables Convention and the MLST do not provide for similar exclusions. Article 1(2) of the Factoring Convention requires the factor to perform at least one extra function in addition to collecting the receivables, which effectively precludes collection-only receivables from its scope. The preliminary draft MLF does not contain an provision excluding transfers of receivables for the purpose of collection-only.

Scope issues requiring further consideration

'Financial' receivables

20. Article 4(2) of the Receivables Convention excludes the assignment of a number of 'financial' receivables arising from various transactions from the scope of the treaty:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

21. The Working Group has already decided that the assignment of receivables arising from financial contracts governed by netting agreements should not be within the scope of the MLF (as consistent with Article 4(2)(b) of the Receivables Convention).[6] However, the Working Group has not yet made a decision in relation to the other six matters identified in Article 4(2).

22. These issues were briefly discussed at the intersessional meeting on scope. The following approach was suggested by NatLaw:

(a) Transactions on a regulated exchange – these types of transactions were excluded from the Receivables Convention because at the time it was being developed States did not have regulated exchanges for receivables. As some States have now established such exchanges/platforms, this exclusion from the MLF may affect those financing transactions.

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5 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paragraphs 104 – 111.

6 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paragraph 20.

These transactions would ordinarily fall within the scope of the MLF and would benefit from its modern regime.

(b) Receivables arising from foreign exchange transactions – Assignments of such receivables should not be covered by the MLF. These receivables even where they might be assigned are not factoring transactions.

(c) Receivables arising from inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments – Assignments of such receivables should not be covered by the MLF. These receivables even where they might be assigned are not factoring transactions.

(d) Receivables arising from the transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary – Assignments of such receivables should not be covered by the MLF. These transactions are expected to be covered by other laws.

(e) Bank deposits – While a bank deposit is in its nature a contractual right to payment of money, they are treated differently to other receivables. Secured transactions laws, including the UNCITRAL Model Law provide for distinct rules applicable to bank deposits and receivables. Bank deposits are likely to be covered by the MLF as proceeds of receivables.

(f) A letter of credit or independent guarantee – Letters of credit and independent guarantees are rights to payment covered by specific regimes, such as the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit. The rules for assignments of receivables would not be appropriate for assignments of rights to claim proceeds from a bank. The UNCITRAL Legislative Guide on Secured Transactions distinguishes and provides distinct rules for receivables and the right to request payment/proceeds under an independent guarantee or a letter of credit.

<u>Questions for the Working Group</u>

- *As a matter of policy, should the 'financial receivables' identified in Article 4(2) of the Receivables Convention be included or excluded from the MLF?*
- *Whether specific provisions are required to address this matter.*

B. Subgroup on Registration

23. During WG3, the Working Group continued its discussion of what registry-related provisions should be included in the MLF. The Working Group agreed that a number of core matters should, at the very least, be included in the MLF.

24. The Working Group also discussed whether only those core matters should be included (on the basis that further guidance regarding the design and operation of the registry could be included in the Guide to Enactment), or whether the MLF should contain a more complete set of registry provisions (as the registry is a fundamentally important aspect of the MLF, and a poorly designed registry would undermine the entire implementation of the instrument). The Working Group did not reach a conclusion on this question, and the Chair accordingly suggested the formation of a subgroup on registration to consider the matter further.

25. The Registration Subgroup was composed of Bruce Whittaker (Subgroup Chair), Louise Gullifer, Alejandro Garro, Catherine Walsh, and Megumi Hara. The Registration Subgroup held four meetings and conducted in-depth discussion on the MLST registration rules.

26. The Registration Subgroup has produced a working draft of registry rules for the Working Group's consideration. The draft can be found in UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 3. It is based on (and marked up against) the registry rules in the MLST.

27. When considering how it should approach the task of preparing the draft, the Registration Subgroup noted from the discussion in paragraph 39 of the UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 2. that there are at least three categories of enacting States that may need guidance on registry rules. Some of those categories of enacting States may already have registries, and would therefore not need comprehensive guidance on the content of the registry rules. As was discussed at the second session of the Working Group[7], however, one of the reasons behind the MLF project is to assist jurisdictions willing to adopt a factoring law, but not yet ready to fully adopt the MLST. It will be likely in these jurisdictions that the registry under the MLF would be the first notice-based registry of its kind. In order to provide the best-possible assistance to these jurisdictions, the Registration Subgroup took the view that the "core" registry rules should address all of the key matters that are needed for a properly-functioning registry.

28. The Registration Subgroup was very mindful, however, of the need to ensure that the registry rules were not overly daunting to the extent possible, and that they did not occupy an inappropriately-large proportion of the MLF as a whole. To that end, the draft was prepared on the basis of the following:

(a) It was assumed that the registry rules will not be included in the body of the MLF itself, but rather in an Annexe to the MLF, or in an Annexe to the Guide to Enactment (in which case an enacting State will need to give legislative force to the rules through a different instrument).

(b) It was also assumed that the registry would be electronic and only accessible online, and that registrations and searches would only be made through templates on the registry website that enter data directly into the registry.

(c) In order to shorten the rules further, the Registration Subgroup removed most of the optionality from the registry rules in the MLST. (In the case of the options in article 20,

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[7] See para.55 in Study LVIII A – W.G.2 – Doc. 4.

however, the Registration Subgroup did not have sufficient time to reach a consensus on which of the presented options is preferable.)

(d) A number of the registry rules in the MLST impose obligations or fetters on the Registry itself. These have been deleted from the draft registry rules for the MLF – in part on the basis that a properly-constructed electronic registry will lead to these outcomes anyway, and in part on the basis that the deleted rules will instead be discussed (and their importance emphasised) in the Guide to Enactment.

Questions for the Working Group

- *Does the Working Group agree with this overall approach?*
- *Does the Working Group agree with the choice of the options that have been hardwired into the rules?*
- *In the case of article 20, does the Working Group prefer option A or option B?*

Consideration of registration matters at previous WG meetings

29. There are at least three categories of enacting States that may need guidance on different registration aspects.[8] One is a State that has not established any registration system relating to transfers of receivables (e.g., Somalia). The other is a State that has a registry but, in several aspects, departs from the MLST and the Registry Guide (e.g., Belarus and Paraguay). Finally, there is a State that has a fully functional and electronic registry (e.g., Jordan and Palestine). Depending on the existing legal framework, States may need more or less guidance on the registration aspects. The five issues identified above may need to be reflected in the MLF, while operational issues would be dealt with in the regulations. In addition to those five issues, the MLF may include provisions that signal how some other fundamental policy choices should be resolved. For instance, Articles 6 and 7 of the Registry Provisions of the MLST limit the function of a registry to performing administrative tasks that do not entail substantive verification of the registration data. The first issue from the list in the preceding paragraph could also be fleshed out in more detail to clearly provide that the registry records notices, rather than factoring agreements or individual invoices, as suggested in a number of recent domestic reforms. Finally, the MLF may also include a provision governing registry fees sending a signal that these should not be excessive, especially if calculated as a percentage of the face amount of a receivable or credit extended to the transferor.

30. During WG2, the Working Group agreed to include guidance on a registry system within the MLF, and that the five points mentioned in paragraph 35 of the Issues Paper[9] were important to include. They were:

i. any person may register data (notice) that identifies the transferor and transferee, and provides a "brief description" of the receivables;

ii. a single registration may cover one or more transfers;

iii. a registration may be made in advance of the transfer to which it relates;

iv. a registration is effective from the time the data is available to searchers; and

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8 UNIDROIT 2021 – Study LVIII A – W.G.2 – Doc. 2, paras 32 – 36.

9 Study LVIII A – W.G.2 – Doc. 2 Paragraph 35

v. any omission or error in the identifier of the transferor that would result in the registered notice not being found in a search against the correct identifier of the transferor renders the registration ineffective.

31. The Working Group agreed that additional consideration should be given to how detailed this guidance should be (noting that substantial documentation on registry design and operation already exists).

32. During WG3, the Working Group reaffirmed that the MLF should provide for a debtor-based registry, and that three additional issues should be regarded as matters related to the core operation of the registry system and thus included in the MLF itself:[10]

i. the registry not performing substantive verification of information

ii. the registration of notices as opposed to agreements or invoices

iii. the charging of reasonable fees

C. Subgroup on Transition

33. At its third session, the Working Group decided that a transition subgroup should be established to further consider the MLF's approach to transition.11 transition subgroup will report back to the Working Group at its fourth session. The documents prepared by the transition subgroup will be circulated to the Working Group separately to this issues paper.

[10] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paras 30 – 37.

[11] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 89.

II. ISSUES REQUIRING FURTHER CONSIDERATION

D. Proceeds

Analysis prepared by Natlaw

34. The Working Group deferred the discussion of proceeds until the general scope issues of the Factoring Model Law (MLF) were addressed. Proceeds raise several issues, not limited to its breadth set out in a definition, but also concerning priorities and applicable law.

35. Article 5 of the Receivables Convention (RC) defines proceeds as *"whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods."* Proceeds thus include anything received in payment of the receivable (e.g., a wire transfer to the assignee's bank account) as well as some other satisfaction (e.g., proceeds in kind such as goods). The definition also includes proceeds of proceeds, such as where the debtor issues a check in payment of a receivable that is subsequently collected and deposited into a bank account. The RC deals with returned goods that may result from the cancellation of a contract generating a receivable separately.

36. The MLST defines proceeds as *"whatever is received in respect of an encumbered asset, including what is received as a result of a sale or other transfer, lease, licence or collection of an encumbered asset, civil and natural fruits, insurance proceeds, claims arising from defects in, damage to or loss of an encumbered asset, and proceeds of proceeds."* This general notion of proceeds reflects the broad scope of the MLST that applies to security rights in all types of movable property that may be disposed of or transferred in a manner that would not be relevant to receivables (e.g., goods may be leased or licensed). Unlike the RC, it provides substantive rules with property effects, including for priority conflicts in proceeds.

37. A limited notion of proceeds is characteristic for transaction or asset-specific laws that are designed not to interfere with the application of other related laws. For instance, this is the case of the Cape Town Convention (see Article 1(w)). In contrast, the MLST applies to all types of proceeds unless they are of the type covered by some other law (e.g., proceeds in the form of intermediated securities). Accordingly, laws governing some aspects of secured transactions and transfers of receivables anticipate that some other law may apply to proceeds and, under certain circumstances, defer to the application of that law.

38. Previously, the Working Group decided that a definition of proceeds in the MLF should take a middle ground between the RC and the MLST – see the discussion column to the definition of proceeds in the Comparison Table (Doc. 4). The Working Group preliminarily discussed whether the definition should be limited to "cash proceeds". This approach would actually narrow the scope as compared to the RC. If the MLF were to apply only to the "traditional factoring transactions" rather than assignments of receivables broadly, this narrow approach might be appropriate.

39. The MLST definition is too broad for the MLF, and the RC definition is a more appropriate starting point. This definition covers two types of proceeds: i) whatever is received in partial or total payment (this language appears to refer to "cash proceeds"); and ii) whatever is received in other satisfaction of the receivable (this language appears to refer to "non-cash proceeds"). At a minimum, a definition of proceeds in the MLF should capture element i). Proceeds that would fall under ii) are much less common in factoring transactions. Including type ii) may also interfere with the operation of other related laws as the scope of proceeds will be extensive.

40. The MLF is expected to follow the approach of the UNCITRAL instruments with respect to the right of the transferee of a receivable to automatically extend to proceeds without the necessity to

describe proceeds in a transfer agreement. In other words, the right of the transferee to proceeds of a receivable shall be automatic and continue as long as the proceeds remain identifiable. The right of the transferee in proceeds has proprietary effects.

41. For type i) proceeds (as long as they are identifiable), the MLF will likely confer automatic third-party effectiveness without any further act (compare with Article 19(1) of the MLST and draft Article 11 of the MLF). These proceeds would include money, negotiable instruments and rights to funds credited to a bank account. Insolvency law also often distinguishes between cash and non-cash proceeds, prescribing a specific process for the use of the former during insolvency proceedings. For types ii) and iii), third-party effectiveness under the MLST would be temporary for a short period of time (e.g., 15 days). If the registration is amended within that period of time, the third-party effectiveness would continue in those types of proceeds. The searcher might not expect to discover registrations describing assets other than receivables and cash proceeds in a "factoring registry".

42. Even if the rules on effectiveness, both as between the parties and as against third parties, were to be applicable to the types ii) and iii) proceeds, the MLF would be a much less appropriate vehicle to prescribe the relevant priority rules (see paragraphs 11 and 12 below). The advantage of covering these types of proceeds would be that the factor obtains greater protection by virtue of benefitting from a property right in the broader range of proceeds, including in the insolvency of the transferor.

Questions for the Working Group

- *Assuming the MLF applies only to "traditional factoring transactions" i.e., the scope is narrower, is the RC definition adequate or too broad?*
- *Other than money, bank accounts and negotiable instruments, are there any other assets that should be categorized as cash proceeds?*
- *Is there a business case to include within the definition of proceeds those that are of non-cash variety?*
- *Assuming the MLF applies to transfers of receivables broadly, is the RC definition adequate?*

43. The MLST and the RC cover two types of proceeds in relation to receivables: i) proceeds arising from a receivable itself and ii) proceeds arising from personal and property rights supporting the payment of a receivable ("supporting rights") (which are within the RC definition of "proceeds" because they are received in respect of the receivable to which they relate). While conferring an entitlement to claim proceeds of the "supporting rights" the text of the relevant RC provision does not refer to "proceeds". The proceeds of supporting rights would typically be some rights to payment (e.g., a payment from the credit insurer). While these instruments impose an obligation on the person that provided or arranged for the supporting right to turn over the proceeds to the secured creditor, they don't interfere with the application of the relevant laws. The MLF is expected to follow this general approach subject to any necessary drafting adjustments.

44. The RC addresses proceeds by providing the assignee with a personal (as opposed to a property) right to claim the proceeds paid to the assignor or a third party, pursuant to Article 14. It also includes a set of limited substantive rules in Article 24. The first rule provides that, if the assignee has priority over other claimants with respect to receivables and proceeds are paid directly to the assignee, the assignee may retain the proceeds. The second rule is geared toward specific financing products such as securitization and undisclosed invoice discounting. In such products, payments are channelled to a special account held by the assignor, separately from its other assets, on behalf of the assignee. Under this rule, the assignee has priority over other claimants if (a) the assignee's

right in the receivable had priority over the other claimant's right in the receivable, and (b) the proceeds are kept by the assignor on behalf of the assignee and are reasonably identifiable from the other assets of the assignor. However, the RC does not address a priority conflict between an assignee claiming an interest in proceeds held in a deposit or securities account and the depositary bank or the securities broker or other intermediary with a security or set-off right in the account.

45. In contrast, the MLST provides a comprehensive system of substantive priority rules, unless the proceeds are the type of asset excluded from its scope (e.g., intermediated securities). These rules cover situations where (a) the proceeds are claimed by two (or more) parties with a security right in the same receivable, (b) the security right to proceeds of a receivable on account of some other collateral (e.g., an acquisition security right in the inventory the sale of which generated receivables that are collected and deposited to a bank account) competes with a security right in receivables as original collateral, and (c) where the proceeds are claimed by one party as proceeds of the receivables, and another party as original collateral (e.g. a claim by the bank that holds the account into which the proceeds are paid). Given the limited scope of the MLF, situations (b) and (c) should not be covered because the competing claim arises under a law under than the MLF. This situation is a matter of general secured transactions law.

Questions for the Working Group

- *Should the MLF follow the RC's personal and substantively limited approach to the priority aspects concerning proceeds?*
- *Is there a reason to include the rules specifically tailored to securitization and undisclosed invoice discounting practices?*
- *Should the priority rules in proceeds in the MLF be limited to situations where a conflict arises between two or more competing claims to the same receivable?*

E. Notification

46. Chapter VI of the preliminary draft MLF sets out the rules related to notification of the debtor.

47. Most of the 'notification' policy issues have already been resolved by the Working Group (as set out in the 'previous consideration' section). However, the Working Group did note one issue that required further consideration:

> *The Working Group tentatively decided that, while there would be some value in developing States for notifications to include the identities of the transferor and transferee, the MLF should not impose this as a requirement as it was not consistent with industry practice. The Working Group noted the issue for further discussion at its fourth session.*[12]

48. The Working Group is invited to give this issue further consideration at its fourth session. If the Working Group reaffirms its decision that the MLF should not require notifications to the debtor to include the identifies of the transferor and transferee, then it might simply be something that could be addressed in the Guide to Enactment.

[12] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 60.

Previous consideration

49. During WG2, the Working Group discussed various aspects of providing a notification of transfer to the debtor of a receivable. The Working Group agreed that the MLF should clearly spell out who is entitled to receive a notification, and that a notification may be provided electronically. The Working Group had agreed to give further consideration to different modes and mechanisms for issuing notifications, the content of a notification as well as the situation when the debtor of a receivable in good faith pays the transferor. The Working Group noted that these aspects could potentially be addressed in the Guide to Enactment.

Background

50. The content of a notification is one of the elements of its effectiveness. Under Chapter VI Article 6(1) of the preliminary draft MLF (which reflects Article 62 of the MLST), a notification is not effective unless it reasonably identifies the secured creditor and the receivables, and it is in a language that is reasonably expected to inform the debtor of its contents, which would include the language of the contract giving rise to the receivable. A notification may thus relate to a single or multiple receivables that may be described specifically or by a reference to "all receivables owed to ABC". A notification need not be labelled as such, as long as it provides the necessary information indicating that receivables have been transferred. The question of what constitutes a reasonable description of receivables is not left to the discretion of the debtor who, when in doubt, may request further information regarding the receivables payable to the transferee.

51. The UNCITRAL instruments require receipt of the notification by the debtor for it to become effective, including to affect the debtor's right to receive a discharge. If a debtor in good faith pays the transferor, in ignorance of the received notification, it is not discharged. If the debtor has some knowledge of a transfer but has not received any notification, it may continue paying the transferor and obtain discharge. Knowledge of some facts beyond the notification and acting on those facts in good faith would not discharge the debtor of a receivable. Conditioning the payment of a receivable on the receipt of effective notification, regardless of notice of some other facts relevant to the transaction, reduces the risk of disputes as to what the debtor actually knew and whether it acted in good faith.

52. Following the UNCITRAL standards, the preliminary draft MLF does not restrict the ability of the debtor of a receivable to prove that its payment to the transferor discharged its obligation if the notification has not been received or its content does not satisfy the minimal requirements. The debtor may prove that the content of the notification was so ambiguous as to create a reasonable doubt whether, for instance, the notification also affected future receivables. Other issues that bear on the effectiveness of a notification, such as whether it was received by an authorised employee of the debtor of a receivable, should remain outside the MLF consistent with the UNCITRAL standards (e.g., applicable domestic laws may define when a notification is effectively received). If the debtor receives a notification, but it is uncertain whether to pay a transferee, it is entitled to request reasonable proof of transfer.

53. The MLF recognises the established principle of technology neutrality that enables actions to be taken by one of the parties electronically or through exchange of written (paper) records. Accordingly, a notification of transfer could be given electronically or by some other means, such as stamping a notice of transfer on a paper invoice. The RC and the MLST do not prescribe modes and mechanisms for providing the notification, but these may be set out in the agreement from which the receivable arises. These international standards do not govern the sale and service agreements pursuant to which the receivable is generated, and these agreements may provide for the mode and form in which a notification may be provided.

F. Future Receivables

54. The MLF will apply to both (i) future receivables arising out of an existing contract, and (ii) future receivables arising out of future contracts.[13] Chapter II Article 6(3) of the preliminary draft MLF provides that '*a transfer agreement may provide for the transfer of a future receivable, but the transfer occurs only when the transferor acquires rights in the receivable or the power to transfer it*.'

55. Chapter I Article 2 of the preliminary draft MLF provides three different version of "future receivable" for consideration by the Working Group at its fourth session:

"Future receivable" means a receivable that arises after the time a transfer agreement is entered into, whether the contract giving rise to the receivable:

(i) is in [existence/effect] at the time the transfer agreement is entered into; or

(ii) only comes into [existence/effect] after that time.

OR

"Future receivable" means a receivable that arises after the time a transfer agreement is entered into, whether or not the contract giving rise to the receivable is in [existence/effect] at that time.

OR

"Future receivable" means a receivable that arises after the time a transfer agreement is entered into. This includes a receivable that arises under a contract that is not in [existence/effect] at that time.

56. The Working Group is invited to consider the different options for defining "future receivable". Once the Working Group decides on its preferred definition of 'future receivables', it might need to give further consideration as to how the definition would apply in different contexts under the draft MLF. For instance, Article Chapter VI Article (7)(1) of the preliminary draft MLF (which reflects 63(1) of the MLST) requires the debtor to pay pursuant to an original agreement until it receives a notification of transfer. Hypothetically, a debtor might receive a notification with respect to the second type of future receivables. For such a notification to be effective, it would have to meet the content requirements, including a reasonable identification of the receivables, which may be complicated if the agreement under which those receivables may arise in the future has not been entered into.

Previous consideration

57. At WG2, the Working Group decided that the MLF should apply to both (i) future receivables arising out of an existing contract, and (ii) future receivables arising out of future contracts.[14]

58. At WG3, there were mixed views on whether the MLF required a definition of "future receivables". Some experts favoured the inclusion of a definition of "future receivables" in the MLF on the basis that a definition would provide certainty in jurisdictions that did not enable parties to provide for a transfer of future receivables or had statutory restrictions on the treatment of future receivables. Other experts suggested that there was no need for a definition as there was no real risk that the MLF could be read to apply to only one type of future receivable. It was suggested that the matter could be dealt with in the Guide to Enactment. *After discussion, the Working Group decided that the MLF should include a definition of future receivables that identified both (i) future*

[13] UNIDROIT 2021 – Study LVIII A – W.G.2 – Doc. 4, para 15.

[14] UNIDROIT 2021 – Study LVIII A – W.G.2 – Doc. 4, para 15.

receivables that arose out of an existing contract after its conclusion, and (ii) future receivables that arose out of a future contract.[15]

59. At WG3, the Working Group also reaffirmed that under the MLF, the assignment of future receivables would take place once the receivable came into existence without the need for a new act of transfer.[16]

Background

60. The RC defines a future receivable as "a receivable that arises after the conclusion of the contract of assignment." The distinction between existing and future receivables is based on the time of the conclusion of the contract of assignment. A receivable arising before or at the time of the contract of assignment is classified as existing, even though it is not payable until a future date. The definition of future receivables covers a range of future receivables, including conditional receivables (that might arise subject to a future event) and receivables that might potentially arise from a future activity of the assignor.

61. Although the RC makes a distinction between existing and future receivables, they are generally treated the same in its provisions. One of the reasons for distinguishing existing and future receivables was to override some limitations in domestic laws with respect to transfers of future receivables. To that end, there are some rules that apply only to future receivables. For instance, Article 8 provides that that the assignment of (multiple) future receivables may be achieved through a single act of transfer. Article 4 of the Annex to the RC similarly provides that a single registration may cover multiple future receivables. The objective of these rules is to facilitate the financing of future receivables. Neither the MLST nor the UNIDROIT Factoring Convention provide a definition of future receivables. However, the MLST does provide a definition for "future assets," which would encompass future receivables.

62. Article 12 of the RC provides for a number of representations of the assignor at the time of conclusion of the contract of assignment, including that the assignor has the power to assign the receivable. However, at the time the agreement of assignment is concluded, the assignor would not inevitably have any power to assign a receivable that is in the future i.e., it does not exist at that time. Rather, such representations with respect to future receivables are made at the time of a transfer. Another question related to the application of Article 16(2) of the RC to notifications and payment instructions with respect to future receivables. It was noted that this article was designed to apply to both kinds of future receivables however, as a practical matter, a factor would provide a notification of a transfer of receivables arising out of a future contract after that contract has been entered into or once those receivables actually arise. In this context, it may be noted that the RC does not provide a definition of the debtor of the receivable, which is defined in the MLST as "a person that owes payment of a receivable subject to a security right". At the time of notification when there is no contract that would generate receivables, the notification would appear to be ineffective as the person is not a debtor at that time. Once the person becomes the debtor, it may be given an effective notification with respect to existing and future receivables.

G. Definition of 'debtor'

63. Chapter I Article 2 of the preliminary draft MLF provides that 'debtor' means '*means a person who owes payment of the receivable, including a guarantor or other person secondarily liable for*

15 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 26.
16 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 27.

payment of the receivable'. This is a slightly simplified version of the definition 'debtor of the receivable' in the MLST.

64. At WG3, Neil Cohen noted that including guarantors in the definition of 'debtor' might cause challenges in other parts of the MLF. It was explained that guarantor in the definition would require guarantors to receive notifications as "debtors" under the MLF and would allow guarantors to use any defences that "debtors" had. Megumi Hara and Ole Böger agreed with Neil Cohen. The FCI noted that it was not usual in practice for third party guarantors to receive notifications of assignments.[17]

65. The Working Group decided to retain the definition of 'debtor' in the preliminary draft MLF, subject to further discussion on how the definition would impact the treatment of guarantors. The Working Group may want to give this issue further consideration at its fourth session.

Previous consideration

66. At WG3, it was decided that the MLF should use the term 'debtor' rather than 'debtor of the receivable'.[18]

H. Debtor discharge by payment

67. Chapter VI Article 7 of the preliminary draft MLF provides the instrument's debtor discharge rules, which are modelled on Article 63 of the MLST and Article 17 of the Receivables Convention. Article 7(4) provides that where there is multiple transfers between the same parties, the debtor is discharged by paying the first payment instruction. Article 7(5) provides that, where there is a chain of transfers between multiple parties, the debtor is discharged by paying the last notification received. The drafting of Article 7(5) has been amended from the corresponding text in the MLST (Article 63(5)) to try to better distinguish between chains of transfers and multiple transfers situations.

68. Chapter VI Article 7(7) has also been amended to allow for the debtor to request further information as to whether they were under an obligation to pay pursuant to the first or the subsequent notification.

69. The Working Group may wish to consider the proposed drafting in Chapter VI Article 7(5) and Article 7(7) of the preliminary draft MLF.

Previous consideration

70. During WG2, the Working Group discussed the rules that govern discharge of a debtor, focusing on Article 17 of the Receivables Convention. Several suggestions were made, including to assess:

i. whether all the paragraphs are appropriate for the MLF as they may relate to international receivables/assignments,

ii. the meaning of notification of a "subsequent assignment" in paragraph (5), and

iii. how the notification of a transfer should operate with respect to future receivables that have not yet arisen.

[17] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paras 125 – 126.
[18] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 123.

71. During WG3, the Working Group decided that the MLF should not include good faith protections to debtors who make payments to the wrong party. The Working Group agreed that Chapter VI Article 7 of the preliminary draft MLF should be amended to allow for the debtor to request further information in relation to whether they were under an obligation to pay pursuant to the first or the subsequent notification, according to whether it was a chain of transfers or multiple transfers between the same parties.[19] It was noted that the language "subsequent transfer/assignment" was insufficiently clear in distinguishing between the two different situations. These modifications can be seen in Chapter VI Article 7(5) (in relation to 'chains of transfers between different parties) and Chapter VI Article 7(7) (in relation to the debtor's right to request further information).

72. *Megumi Hara* queried whether the MLF should include a rule clarifying which party would be liable for the cost of the debtor complying with an assignment. It was noted that the French Civil Code had been amended in 2016 to provide that the assignee would be primarily liable for the assignment cost, although the debtor was allowed to demand the cost from both the assignee and the assignor. *A representative of FCI* explained that in domestic factoring, there was usually no cost associated with an assignment. For international transfers, the industry practice was for the debtor to assume any charges related to the international transfer. It was suggested that there was no need to address this issue in the MLF.[20]

Background

73. It appears that all the elements covered by Article 17 of the Receivables Convention, as reflected in Article 63 of the MLST, are appropriate for inclusion in the MLF, as none of them concerns solely international assignments or international receivables. The provisions apply irrespectively of whether the debtor of a receivable is located in the same jurisdiction as the transferor or the transferee. However, the agreement under which the receivable arises may be subject to a foreign law, which will govern the rights and obligations of the debtor vis-à-vis the transferee, including whether the debtor obtains discharge. This aspect is addressed in the conflict-of-laws rules proposed for inclusion in the MLF.

74. The Guide to Enactment to the MLST provides examples with respect to the situations covered by Article 63, distinguishing between

i. multiple payment instructions (the debtor obtains discharge by paying pursuant to the last instruction before payment is effectuated);

ii. multiple notifications of transfers of the same receivable by the same transferor (the debtor obtains discharge by paying pursuant to the first notification); and

iii. multiple notifications of successive transfers of the same receivable (the debtor obtains discharge by paying pursuant to the last notification).

75. While the last situation where the same receivable is transferred multiple times is common in international factoring, in practice, the debtor receives only a single notification of transfer. The debtor of a receivable needs to be able to distinguish between situation 2 and 3 to obtain discharge. The different approach in these two situations is based on an assumption as to which transferee is likely to have priority or be entitled to claim payment. Paragraph (8) assists the debtor in determining whom it should pay by entitling the debtor to request a reasonable proof of transfer when a notification is received from the secured creditor/transferee. In a series of successive transfers, one person may act as both transferor and transferee, such as where Person A initially acquires a

19 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 39.

20 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 40.

receivable but then transfers it to Person B. After the transfer, Person A's status changes from transferee to transferor. Article 63(8) of the MLST entitles the debtor of a receivable to request proof if a notification is received from a secured creditor/transferee, which should be equally applicable in situation 3 where the debtor receives a notification from Person A. Chapter VI Article 7(7) of the preliminary draft MLF (which corresponds to Article 63(8) of the MLST) has been amended to ensure the debtor can request further information as to who they must pay in order to obtain discharge.

I. Anti-assignment clauses (AACs)

76. Chapter II Article 8(1) of the preliminary draft MLF overrides anti-assignment clauses (AACs) that limit the transferor's right to transfer a receivable in any way (as consistent with Article 10(1) of the MLST and Article 14 of the RC). However, the preliminary draft MLF goes further than both the MLST and the RC in overriding AACs, as it does not preserve the right of the debtor to claim damages from the transferor. Chapter II Article 9(2) of the preliminary draft MLF extends the override on AACs to also apply to the transfer of supporting rights (as consistent with Article 10(2) of the RC).

Previous consideration

77. At WG1, the Working Group agreed that the MLF should incorporate the approach of the RC with respect to anti-assignment clauses. However, the Working Group also agreed that such clauses would be ineffective rather than preserve the right of the debtor to claim damages from the transferor. The Working Group did not settle on several issues:

78. At WG3, The Working Group decided that the MLF should provide for a complete override of any restrictions on transfers of supporting rights to ensure the approach to overriding AACs for supporting rights was aligned with the approach to overriding AACs on the transfers of the receivables themselves.[21] It was agreed that the rule in the MLF providing for an override on AACs for supporting rights could be modelled on Article 10(2) of the Receivables Convention. It was further agreed that a provision modelled on Article 10(3) of the Receivables Convention should not be included, so that the override on AACs for supporting rights in the MLF would be a complete override without preserving any residual rights for a party to sue for breach.

Background

79. Supporting rights may be issued in various forms. The Receivables Convention distinguishes between "accessory" and "independent" rights. Accessory rights include suretyship, pledge and mortgage, which are transferred automatically, without a new act of transfer. Independent rights, on the other hand, include independent guarantees and stand-by letters of credit, which often require a new act of transfer. In cases where the applicable law requires a new act of transfer, the Receivables Convention provides in Article 10(1) that the "assignor is obliged to transfer such right and any proceeds to the assignee."

80. Factoring agreements typically provide that certain rights automatically benefit factors, including any property right in the sold goods, instruments taken by transferors in settlement of the receivable, insurance policies reinforcing the payment of receivables, guarantees and indemnities given by third parties, and similar. Except where the law requires a separate act to transfer the benefit of a supporting right (e.g., for a letter of credit), the UNCITRAL instruments provide for a transfer of the benefit in supporting rights whether or not the security agreement actually provides

[21] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 60.

for such transfers. At times, the supporting rights may be issued subject to restrictions on their transfers. Article 10(2) of the RC provides for an explicit override of any restriction on a transfer of a property or personal right securing payment of the assigned receivable. The combination of Articles 13 and 14 of the MLST achieves the same effect without an explicit provision.[12] The Working Group has decided to depart from the approach of the UNCITRAL instruments on the effect of breaching a contractual restriction on a transfer of a receivable, and to provide under the preliminary draft MLF that such a contractual restriction is wholly ineffective. A transfer of a supporting right despite a contractual restriction has the same effect under the UNCITRAL instruments as with respect to a transfer of a receivable i.e., the obligor may claim damages from the transferor. Chapter II Article 9(2) of the preliminary draft MLF diverges from this approach by not allowing the debtor to claim damages in relation to the transfer of supporting rights in contravention of an anti-assignment clause.

J. Disposition of collateral and distribution of proceeds

81. Chapter VII Articles 3 and 4 of the preliminary draft MLF provide rules regarding disposition of the collateral and distribution of proceeds (as consistent with Articles 78 and 79 of the MLST). The draft Model Law Comparison Table (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 4) contains a number of issues for the Working Group to discuss regarding these articles. The Comparison Table explains how the corresponding MLST articles have been adapted (e.g., not referring to license or lease of a receivable), and provides further suggestions for consideration (e.g., to simplify the drafting that would not refer to "judicial enforcement" in a number of provisions).

Previous consideration

82. At WG2, the Working Group agreed that further consideration should be given to Articles 78 and 79 of the MLST that may need to be adapted for the purpose of the MLF. These two articles cover disposition of the collateral and distribution of proceeds. Paragraph 62 of the Issues Paper WG2[22] only noted that international standards provide for disposal of the collateral, which may also be applicable to receivables. The Working Group generally agreed that provisions along those lines may need to be included in the MLF.

83. At WG3, the Working Group reaffirmed that the MLF should have priority rules that clarified the positions of junior and senior transferees.[23]

84. The preliminary draft MLF contains preliminary provisions that adapt these articles for the purpose of the MLF.[24] Similarly, the Working Group agreed that further consideration should be given to adapting Article 72 of the MLST to the MLF, which was included in the draft with some questions to the Working Group.[25]

K. Digital currencies

85. Chapter 1 Article 2 of the preliminary draft MLF defines a 'receivable' as a 'contractual right to payment of a *sum of money'*. Article 2(a) of the Receivables Convention refers to a 'right to payment of a *monetary sum*' whereas Article 2(dd) of the MLST refers to a 'right to payment of a *monetary obligation*'. The MLST formulation may not be desirable for inclusion in the MLF, as one

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22 See Study LVIII A – W.G.2 – Doc. 2 Paragraph 62.

23 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 70.

24 See UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 3 Page 39-43.

25 See UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 3 Page 44.

technically holds either a right to discharge of a monetary obligation, or a right to payment of a sum of money. The term 'money' is not used elsewhere in the preliminary draft MLF.

86. The term 'money' should be interpreted broadly, to include payments is non-fiat digital currencies, such as cryptocurrencies. There has not yet been any decision by the Working Group to deal with this issue directly in the MLF, but is in an issue that should be considered in the future Guide to Enactment.

Previous consideration

87. At WG3, the Working Group discussed how the MLF should treat payments in non-fiat currencies, such as cryptocurrencies.[26] The Working Group agreed that the MLF should be drafted to accommodate the emerging use of cryptocurrencies. It was noted that some invoice platforms were built on the Etherium blockchain and facilitated payments in the cryptocurrency "Ether". A representative of FCI noted that it was unaware of any of its members using cryptocurrencies in their factoring transactions. Giuliano Castellano noted the difference between "money" and "legal tender" and suggested that the MLF should not use the term "legal tender". It was suggested that the MLF could define the concept of "money" broadly to include cryptocurrencies. It was noted that the issue went beyond payments in cryptocurrencies, as receivables could also be transformed into digital assets. The Secretary-General queried whether an assignment contract that required a payment in a digital asset would be considered an obligation in kind and therefore be linked to the liquidity of the digital asset. It was noted that these complex matters probably should not be dealt with in the MLF and should instead be discussed in the Guide to Enactment. It was suggested that the Working Group should consider the work being undertaken by UNIDROIT in the field of digital assets.

88. The Working Group agreed that the MLF should allow for the possibility of payments in non-fiat currencies. The Working Group agreed that the use of the term "money" in the Model Law should be broad enough to encompass future developments in the field of digital currencies and that the Guide to Enactment should provide further guidance on the issue.

[26] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paras 64 - 67.

III. ISSUES ON WHICH POLICY AGREEMENT HAS BEEN ACHIEVED

L. Outright assignments and security interests

89. The MLF will apply to outright assignments of receivables. The MLF will also apply to the grant of security interests over receivables, whether or not by way of assignment.[27]

90. Chapter 1 Article 2 of the preliminary draft MLF provides that 'transfer' of a receivable means (i) an outright transfer of the receivable by agreement; and (ii) A transfer of the receivable by agreement, or the creation of an interest in the receivable by agreement, in either case to secure payment or other performance of an obligation, regardless of the way in which the parties have described the transaction, the status of the transferor [or transferee] or the nature of the secured obligation.

M. Consumer receivables

91. Chapter I Article 1(4) of the preliminary draft MLF provides that '*nothing in this Law affects the rights and obligations of a transferor or a debtor under other laws governing the protection of parties to transactions made for personal, family or household purposes'*. This drafting is consistent with Article 1(5) of the MLST and was approved by the Working Group at its third session.

Previous consideration

92. At WG1, the Chair summarised that the Working Group favoured the application of the MLF to consumer transactions where the consumer was the assignor, assignee or debtor, although with a deferment to any existing applicable consumer protection laws in the implementing State. There was no consensus on whether the MLF should provide a definition of consumer transactions as based on Article 4(4) of the Receivables Convention as an exemplary provision, or whether it should just defer to the domestic consumer protection laws. He suggested that the MLF might also need to defer to fintech regulation and financial consumer protection laws that protected consumers as assignees, although further research was required on this matter.[28]

93. At WG3, the Working Group decided to retain Article 1(4). The Working Group decided that the Guide to Enactment should explain that the application of Article 1(4) was limited to laws specifically related to consumer protection.[29]

N. Whole or part-interests

94. The MLF will apply to all or part of an undivided interest in a receivable.[30] Chapter II Article 6(2) of the preliminary draft MLF provides that a transferor may transfer '*(a) a part of or an undivided interest in receivables; (b) a generic category of receivables; and (c) [all of its receivables]*'.

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[27] UNIDROIT 2020 – Study LVIII A – W.G.1 – Doc. 4 rev. 1, paragraph 81.

[28] UNIDROIT 2020 – Study LVIII A – W.G.1 – Doc. 4 rev. 1, paragraph 120.

[29] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paragraph 118.

[30] UNIDROIT 2021 – Study LVIII A – W.G.2 – Doc. 4, paragraph 15.

O. Negotiable instruments

95. The MLF will not apply to negotiable instruments.[31] However, the future Guide to Enactment will provide guidance to States in relation to how a new factoring law should intersect with the use of negotiable instruments. The Guide to Enactment will encourage implementing States to transition to modern factoring practices, without precluding the continued use of negotiable instruments.

Previous consideration

96. At WG2, the Working Group noted that in many countries negotiable instruments are often used by factors to purchase receivables. Receivables arising under a contract are often incorporated into a negotiable instrument for the purpose of obtaining payment by way of summary proceedings in court or using criminal law sanctions for failure to discharge the instrument. Transfers of negotiable instruments are subject to a discrete set of rules and have caused a number of challenges in the development of receivables finance, as explained by the World Bank Group.

97. At WG3, The Working Group discussed the use of negotiable instruments in different States. It was noted parties in developing States tended to use negotiable instruments to strengthen enforcement rights. Several experts suggested that as negotiable instruments were regulated by a separate legal regime to factoring it would be undesirable for the MLF to cover negotiable instruments. It was suggested that the MLF should apply to proceeds and supporting obligations in the form of negotiable instruments, but should not apply to transfers of negotiable instruments. A representative of FCI explained that bills of exchange were used in many developing States under factoring contracts because investors did not have sufficient confidence that they would get redress from courts under factoring contracts alone. Financial institutions in other States used post-dated cheques to strengthen the creditor's ability to collect from the debtor. FCI estimated that only a small percentage of the $3 trillion dollar factoring industry was based on factoring backed by bills of exchange or post-dated cheques. A representative of the APEC Financial Infrastructure Development Network agreed that negotiable instruments should not be included within the scope of the MLF. However, it noted that negotiable instruments would continue to be an important part of the legal regimes in many States and suggested that the MLF could include a provision clarifying that the MLF would not preclude the use of other existing mechanisms (such as forfaiting). Several participants supported the notion but suggested that it was best dealt with in the Guide to Enactment rather than the MLF itself.

98. At WG3, the Working Group agreed that the MLF would not apply to negotiable instruments. The Working Group further agreed that the Guide to Enactment should provide guidance to States in relation to how a new factoring law should intersect with the use of negotiable instruments. The Guide to Enactment should encourage implementing States to transition to modern factoring practices, without precluding the continued use of negotiable instruments.[32]

P. Payment instruction

99. Chapter VI Article 6 of the preliminary draft MLF provides the content requirements for payment instructions, as consistent with Article 62 of the MLST.

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31 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 10.
32 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, paras 7 – 10.

Previous consideration

100. At WG3, the Working Group decided that the MLF should include the elements for effective payment instructions set out in Article 62 of the MLST.[33]

Background

101. The notification of transfer may, but need not include payment instructions to the debtor of a receivable who may be notified that a receivable has been transferred, but that the transferor would continue collecting payments. Alternatively, the transferee may decide to collect payments directly, in which case it would instruct the debtor accordingly, either in the notification or separately in a payment instruction. The MLST, in Article 62, prescribes the minimal content requirements for a payment instruction consistently with a notification of a transfer. However, for a payment instruction to fulfil its purpose, it must also provide the information necessary for the debtor of a receivable to effectuate payment. Article 61(2) states which aspects of the payment obligation an instruction may (e.g., a deposit account to which payment must be made) and may not change (e.g., the currency of payment). Receipt of a payment instruction affects the debtor's discharge, so it should contain the information that is relevant to effectuate payment, including a demand to make payment(s) to a particular deposit account.

Q. Waiver and defences

102. Chapter VI Articles 8 and 9 of the preliminary draft MLF provide rules regarding defences and rights of set-off for the debtor and agreement not to raise defences or fights of set off. These rules are based on Articles 64 and 65 of the MLST and Articles 18 and 19 of the RC.

103. The MLF will be subject to overriding consumer protection laws that may further limit the types of defences that a consumer debtor may be able to waive (as provided for in Chapter 1, Article 1(4) of the preliminary draft MLF).

Previous consideration

104. At WG2, the Working Group discussed whether the MLF should preclude a waiver of debtor's defences beyond those set out in Article 19(2) of the RC.[34] Under that provision, the debtor may not waive defences i) arising from fraudulent acts of the assignee; and ii) based on its incapacity. These two defences are designated as non-waivable in Article 65(3) of the MLST as well. This approach mirrors the unenforceability of a negotiable instrument against an obligor who may assert a "real defence", such as under Article 30 of the UN Convention on International Bills of Exchange and International Promissory Notes. However, the 2016 UNIDROIT Principles of International Commercial Contracts (see Article 3.1.4) allow a party to a contract entitled to its avoidance for fraud to waive it.

105. At WG3, the Working Group agreed to adopt the approach in Article 19(2) of the Receivables Convention in relation to the waiver of defences and the application of laws protecting consumer debtors of receivables.[35]

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33 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 63.

34 See Paragraph 150 of UNIDROIT 2021 – Study LVIII A – W.G.2 – Doc. 4

35 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 68.

R. Conflict of laws

106. In 2020, between WG1 and WG2, a subgroup on conflict of laws was formed to prepare draft conflict of laws rules for the MLF. The rules prepared by the subgroup were discussed by Working Group at WG2 and ultimately adopted. They are contained in Chapter VIII of the preliminary draft MLF.

Previous consideration

107. During WG2, the Working Group considered a number of conflict of laws suggestions formulated by the sub-group. It was noted that the Working Group may wish to give further consideration to the Chapter 3 Article 12 of the preliminary draft MLF that preserves the third-party effectiveness of a transfer upon relocation of the transferor to another State (based on Article 23 of the MLST). The MLST article covers a situation where the law of a State that enacted the MLST becomes applicable to third-party effectiveness, which may occur upon change in the connecting factor as a result of relocation of the grantor or encumbered asset.

108. Chapter 3 Article 12 of the preliminary draft MLF adapts the MLST provision to apply only when the location of the transferor changes. If the transferee takes an action within the grace period after relocation, the third-party effectiveness would be preserved.

109. At WG3, the Working Group reaffirmed its previous decisions in relation to conflicts of laws and decided that Article 12 of the draft MLF should remain consistent with the approach in Article 23 of the MLST.[36]

S. Insolvency

110. The MLF will not provide for any additional specialist insolvency rules, although the future Guide to Enactment will explain that implementing States should ensure that domestic insolvency laws were well coordinated with factoring laws.

Previous consideration

111. At WG2, the Working Group requested some background information to consider several issues relating to the impact of insolvency on transfers of receivables.

112. At WG3, the Working Group agreed that there was no need for additional insolvency rules in the MLF, although the Guide to Enactment should explain that implementing States should ensure that domestic insolvency laws were well coordinated with factoring laws. The Working Group further agreed that the Guide to Enactment should adopt the position in the UNCITRAL Insolvency Legislative Guide that secured interests should have priority in insolvency unless there was strong justification for them not to.[37]

Background

113. The MLST, in Article 35, preserves the effectiveness and priority of a security right in insolvency, subject to the applicable insolvency law that may provide priority to another claimant. This article does not interfere with the applicable insolvency law, including the powers that an

36 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 72.
37 UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 70.

insolvency administrator may exercise to avoid the effectiveness of a security right, as a preferential or fraudulent transfer. This article is complemented by Article 94 pursuant to which the insolvency court must respect the law applicable to security rights under its conflict-of-laws rules. The UNCITRAL secured transactions instruments do not deal with other aspects of insolvency law. Accordingly, a transfer of a receivable, whether outright or in security, will be protected in insolvency if the requirements of third-party effectiveness under the applicable factoring law have been satisfied.

114. The UNCITRAL Insolvency Guide addresses other aspects of insolvency law that have an impact on security rights. For instance, it discusses the extent to which assets belonging to the insolvent debtor subject to a security right belong to the estate, as opposed to being treated as "third-party assets" and thus generally excluded from the estate, although subject to exceptions, as where they are necessary to an effective reorganisation. The transferred receivables would not be included in the estate unless an outright transfer is recharacterised as a security transfer. In some jurisdictions, receivables acquired by a transferee other than by an outright transfer (e.g., through an ownership fiduciary transfer under Mexican law) may not become part of the estate. However, these are country-specific approaches to insolvency that may be beyond the scope of this project. A transferee's rights to the proceeds of the transferred receivables and made effective against third parties prior to insolvency should be recognised. In some jurisdictions, any receivables that arise post-petition are deemed to belong to the estate free of a right of a transferee, regardless of whether the transfer agreement covers future receivables. In other jurisdictions, the solution is more nuanced, such as when future receivables are excluded from the estate (or subject to a security right in favour of the transferee/assignee) if they arise post commencement but as a consequence of a legal relationship which existed before the opening of insolvency proceedings. All these issues, including the use of receivables by the insolvency administrator (to facilitate reorganisation subject to providing adequate protection to a transferee) are matters of insolvency law.

T. Factoring Regulation

115. The Working Group has identified a number of regulatory issues that will be explored in the future Guide to Enactment.

Previous consideration

116. At WG3, the Chair noted that issues related to regulatory rules would be explored in the Guide to Enactment.[38]

Background

117. During its previous meetings, the Working Group referred to regulation in several instances, but without specifying which specific regulatory rules apply to factoring activities, and how. The purpose of this section is to provide background information on the nature of regulation that is necessary for the deployment of factoring products. Several projects to enact new factoring laws in developing economies (e.g., Georgia, UAE, and others) take into account regulation, and even include regulatory rules within factoring laws. The lack of clarity with respect to which regulation applies to factoring activities and how has become a roadblock in the deployment of factoring products.

118. Albeit industry standards and international best practices have been established, the regulatory governance of factoring activities and entities largely remains a domestic endeavour. In such a fragmented system, domestic policymakers have adopted a variety of regulatory approaches.

[38] UNIDROIT 2021 – Study LVIII A – W.G.3 – Doc. 4, para 91.

In some cases, factoring has been labelled as an "unregulated activity", which may be misleading. Qualifying factoring as an unregulated activity might indicate that factoring can be offered by non-bank financial institutions (NBFIs) without obtaining a specific authorisation, such as a factoring license. In these instances, however, factoring companies might still need to be registered as commercial companies and compliance with some regulatory standards might be required. Moreover, if factoring activities are offered by regulated financial institutions, they are regulated under existing regimes. Hence, in any given jurisdiction, the complete lack of any form of regulation for factoring might ultimately flag the existence of gaps in the domestic regulatory framework for financial services, as financing arrangements can be offered to the public without any basic form of control.

119. Provided that there are no significant gaps in domestic legal systems, factoring activities and entities may fall within the regulatory perimeter of financial regulation in different ways. First, at the most basic level, even when factoring entities are not subjected to specific licensing requirements, different regulatory standards might be applicable. Typically, domestic conduct of business regulation, aimed at protecting customers and ensuring market integrity, might apply. Most notably, anti-money laundering (AML) regulation and auditing requirements are commonly established for any type of financial institution. In addition, self-regulatory regimes are common in markets where factoring is developed. Domestic and international associations, such as the Factors Chain International (FCI) and the International Chamber of Commerce (ICC),[39] set industry-wide practices designed to protect the reputation of the industry and promote its sound development.

120. Second and more commonly, factoring is considered a regulated activity that can be offered by financial institutions. In some jurisdictions, factoring is specifically listed amongst the activities that regulated credit institutions – such as banks and NBFIs – are authorised to offer. In these instances, legislation, such as domestic banking laws, or administrative acts, enacted by regulatory authorities under general delegation mechanisms, refer to factoring as one of the regulated financial services that regulated financial institutions may offer under their license. Hence, as the regulatory regimes applicable to such entities are extended when factoring products are offered, an articulated set of conduct of business rules and prudential requirements is normally applied.

121. Third, a growing number of jurisdictions is considering factoring as a regulated activity that can be offered under a special licensing regime. Typically, a specialised factoring law, or another legislative act, establishes the essential regulatory requirements for factoring companies. Specifically, a mandatory requirement to obtain a factoring license is established for any entity seeking to engage in factoring activities. Licensing and supervisory functions are allocated to one of the domestic financial regulators. Fundamental licensing requirements as well as basic conduct of business and prudential standards are also established in legislation. Delegation mechanisms are provided for to entrust the licensing authority with the power to adopt more detailed standards. In general, this approach allows the implementation of a more streamlined regulatory regime for factoring companies. However, where a prohibition to engage in factoring activities is established, coordination with existing licensing regimes for banks is necessary.

122. Specific challenges emerge depending on the regulatory approach that includes factoring activities within the regulatory perimeter. When factoring is listed as one of the activities that regulated entities can offer, the applicable regulatory regimes for such entities are generally straightforward. A bank or a NBFI engaging in receivables finance, in fact, must comply with all prudential and conduct of business requirements that normally apply to banks and NBFIs. However, it might be uncertain whether an unlicensed financial institution can engage in factoring activities without any license. Without clear regulatory guidance, factoring companies might be established, but the potential growth of the industry is limited. In a similar vein, while a specialised factoring law

[39] Other associations are also very active in setting standards for the industry. See for example the Secured Finance Network (formerly the Commercial Finance Association) and the World of Open Account (WOA).

may clarify important private law elements, regulatory and supervisory ambiguities may persist. Without a specific licensing regime for factoring companies, the provision of factoring products may trigger compliance risks. For these reasons, in mature markets, financial institutions engaging in factoring tend to prefer a clear licensing regime that avoids ambiguities.

123. In the absence of international guidance on the core regulatory elements for factoring activities, uncertainties often emerge even when specialised licensing regimes have been established. This typically occurs when coordination between legal and regulatory elements is lacking or inadequate. In particular, a series of issues have been observed in different jurisdictions. The most common are: (i) lack of clarity on the legal consequences of losing a factoring license; (ii) uncertainty on whether banks can engage in factoring activities under their banking license, or whether they should obtain a new license; and (iii) jurisdictional conflicts may arise if multiple supervisory authorities co-exist and supervisory responsibilities over factoring activities have not been clearly allocated.

124. In light of these considerations, law reform projects aimed to promote access to credit through factoring have been addressing fundamental regulatory issues. The implementation of a private law framework governing factoring transactions has been paired with the implementation of core regulatory provisions. Specifically, either within domestic factoring laws or through other legislation, the following elements are typically covered in the factoring regulatory framework:

125. Licensing and Supervision. Factoring is defined as a regulated activity that requires prior authorisation. A new licensing regime is established for factoring companies and coordination with existing licensing requirements for banks is ensured. Licensing powers and supervisory functions are clearly allocated and coordinated between existing supervisory authorities.

126. Prudential Regulation. A simplified and sound set of prudential requirements is established for factoring companies. These typically entail provisioning allowances, based on applicable accounting standards, minimum capital requirements, and systems of risk controls. The supervisory authority is delegated the powers to issue more detailed regulations.

127. Conduct of Business Regulation. The core elements of a conduct of business regulation that factoring companies should implement are established. These normally require fit and propriety standards for senior managers, a system to handle complaints, auditing requirements, and the application of general AML regulation. Detailed rules for licensing requirements and prudential standards are then established.

128. Addressing these aspects is key to establishing a cohesive regulatory framework for factoring activities and companies. Their inclusion in a specialised factoring law is the most straightforward way to achieve such a result and ensure clarity and legal certainty. This approach expects the factoring law to set minimum standards and empower supervisors with the tools to provide details without imposing disproportionate regulatory requirements. Regulatory authorities should be given leeway to adapt prudential and conduct requirements to evolving economic circumstances.

IV. OTHER MATTERS

U. History of the Model Law on Factoring project

129. In December 2018, as one of its proposals for the UNIDROIT 2020-2022 Work Programme, the World Bank Group (WBG) suggested that UNIDROIT develop a Model Law on Factoring. The WBG proposal highlighted three reasons why a UNIDROIT Model Law on Factoring should be developed:

(i) To facilitate the use of factoring as an important form of financing increasing access to credit;

(ii) To address the constraints in access to credit as a limit on economic growth, particularly in developing countries and emerging markets; and

(iii) The gap that currently exists in international standards regarding factoring. The proposal noted that existing instruments largely focus on international or cross-border transactions and do not provide sufficient guidance to States to develop functional domestic factoring frameworks. The MLST on the other hand, does provide elaborate asset specific rules for the development of national rules for assignments of receivables. Adoption of the Model Law in itself, however, is not sufficient to develop a fully functional national factoring system.

130. At its 98th session in May 2019, the UNIDROIT Governing Council approved the project for the 2020-2022 Triennial Work Programme.[40]

131. On 11 February 2020 an initial informal meeting on the project was held in the margins of an international secured transactions conference in Cartagena, Colombia.

132. In March 2020, a Working Group was established with UNIDROIT Governing Council Member Henry Gabriel as Chair to prepare the draft Model Law on Factoring. Between 1-3 July 2020, the Working Group met remotely for its first session. Between 14-16 December 2020 the Working Group met remotely for its second session. Between 26-28 May 2021, the Working Group met remotely for its third session.

V. Target Audience

133. The Model Law will be a standalone instrument for adoption by States looking to reform their domestic law to facilitate factoring. As consistent with all UNIDROIT instruments, the Model Law should be capable of being adopted by both common law and civil law States.

134. While the Model Law should be capable of serving as a model for law reform in any State, it was suggested at the Cartagena meeting that the Working Group should develop the Model Law with a focus on developing States and emerging markets that want to reform their existing domestic factoring laws but are not yet in a position to undertake a full reform of their secured transactions law.

W. Format of the Model Law

135. The Factoring Model Law will consist of a set of black letter rules, possibly accompanied by a limited commentary on each rule to explain its operation. This approach is consistent with the other

[40] UNIDROIT 2019 C.D. (98) 17, p. 36.

model law that the Institute has developed, the UNIDROIT Model Law on Leasing, adopted in 2008. The Model Law on Leasing comprised of 24 articles accompanied by a 24-page commentary.[41]

X. Supplementary documentation (Guide to Enactment)

136. Initially, it was anticipated that the MLF would only need to be accompanied by a short commentary on each article. However, during its sessions, the Working Group has deferred an increasingly large number of matters to be addressed in the MLF's supplementary documentation.

137. To address the extensive number of matters that the Working Group has deferred to the supplementary documentation, the UNIDROIT Governing Council might need to consider whether the mandate of the Working Group should be extended to prepare additional implementation documents as a project on the Institute's 2023 – 2025 Triennial Work Programme at its 102nd session in May 2022.

Y. Title of the instrument

138. It is anticipated that the formal title of the instrument will be the 'UNIDROIT Model Law on Factoring'. However, it has been suggested by the Working Group that this title might be inappropriate, on the basis that (i) the scope of the instrument is broader than traditional notions of factoring (as it covers securitisation) and (ii) the word 'factoring' is not used in the preliminary draft MLF anywhere.

139. The Working Group may wish to give this issue further consideration.

Z. Terminology

Use of Standard Definitions

140. It is suggested that the Model Law and other documentation produced by the Working Group build on the "Standard Definitions for Techniques of Supply Chain Finance (SCF)",[42] as adopted by the Global Supply Chain Finance Forum.[43]

141. The Standard Definitions document provides definitions for terms such as receivables discounting, forfaiting, factoring, factoring variations, payables finance, distributor finance, and pre-shipment finance, explaining their mechanics. It is not suggested that the Model Law would need to define the various techniques, merely that Working Group documents use the Standard Definitions when distinguishing between different SCF techniques to ensure uniformity, consistency and accuracy.

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[41] The Model Law on Leasing and accompanying commentary is available at: https://www.unidroit.org/explanatory-model-law-leasing-2008/english.

[42] https://iccwbo.org/content/uploads/sites/3/2017/01/ICC-Standard-Definitions-for-Techniques-of-Supply-Chain-Finance-Global-SCF-Forum-2016.pdf.

[43] The Global Supply Chain Finance Forum represents a number of industry associations with members around the world, including the International Chamber of Commerce (ICC) Banking Commission, BAFT, the Euro Banking Association (EBA), Factors Chain International (FCI), and the International Trade and Forfaiting Association (ITFA). The International Factors Group, one of the original sponsoring associations is now integrated with FCI.

Consistency of terminology with existing instruments

142. Existing instruments use different terminology for related concepts. The Working Group will need to consider which terminology the Factoring Model Law should use. The terminology to be adopted by the Factoring Model Law will, to a large extent, depend on the scope of the instrument. The following table sets out the different language used for several core concepts in four instruments that have been adopted over the past 30 years.

Factoring Convention (1988)	**Receivables Convention (2001)**	**UNCITRAL Model Law (2016)**	**AFREXIMBANK Factoring Model Law (2016)**
Supplier	Assignor	Grantor	Client
Factor	Assignee	Secured Creditor	Factor
Factoring Contract	Contract of Assignment	Security Agreement	Factoring Contract
Contract of sale of goods	Original Contract	Agreement between the grantor and the debtor of the receivable	Supply Contract
Notice of the assignment	Notification of assignment	Notification of a security right in a receivable	Notice of the assignment

AA. Composition of the Working Group

143. As consistent with UNIDROIT's established working methods, The Working Group is composed of the following experts selected by UNIDROIT for their expertise in the field of factoring. Experts participate in a personal capacity and represent the world's different systems and geographic regions. The Factoring Working Group is composed of:

1. Henry Gabriel (Chair) (United States)
2. Giuliano Castellano (Italy)
3. Michel Deschamps (Canada)
4. Neil Cohen (United States)
5. Louise Gullifer (United Kingdom)
6. Alejandro Garro (Argentina)
7. Megumi Hara (Japan)
8. Catherine Walsh (Canada)
9. Bruce Whittaker (Australia)

144. UNIDROIT has also invited a number of intergovernmental organisations and individual experts with knowledge in the field of factoring to participate as observers in the Working Group. Participation of these different organisations will ensure that different regional perspectives are taken into account in the development and adoption of the instrument. It is also anticipated that the cooperating organisations will assist in the regional promotion, dissemination and implementation of the Model

Law once it has been adopted. The following organisations have been invited to participate as observers in the Working Group:

- The World Bank Group
- The United Nations Commission for International Trade Law (UNCITRAL)
- The Kozolchyk National Law Center (NatLaw)
- The European Bank for Reconstruction and Development (EBRD)
- The Organization of American States (OAS)
- The African Export-Import Bank (AFREXIMBANK)
- Organisation for the Harmonisation of Business Law in Africa (OHADA)

145. Finally, UNIDROIT has also invited a number of industry associations to participate as observers in the Working Group, to ensure that the Model Law will address the industry's needs in facilitating factoring across the globe. The industry associations will also assist in promoting the implementation and use of the Model Law. The following private sector associations have been invited to participate as observer's in the Working Group:

- Factors Chain International (FCI)
- World of Open Account (WOA)
- Secured Finance Network (CFA)
- APEC-APFF/Financial Infrastructure Development Network
- International Chamber of Commerce (ICC)

BB. Methodology and Organisation

146. Under the guidance of the Working Group Chair Professor Henry Gabriel, the Working Group will undertake its work in an open, inclusive and collaborative manner. As consistent with UNIDROIT practice, the Working Group will not adopt any formal rules of procedure and seek to make decisions through consensus.

147. The Factoring Model Law is a high priority project on the UNIDROIT Work Programme for the period 2020-2022. The Secretariat intends to complete the project during this Work Programme.

(a) Drafting of the Model Law 2020-2021

    i. First session: 1-3 July 2020 (remote)
    ii. Second session: 14–16 December 2020
    iii. Third session: 26-28 May 2021
    iv. Fourth session: 1-3 December 2021
    vi. Fifth session: First half of 2022

(b) Consultations and finalisation 2022

(c) Adoption by the Governing Council at its 102nd session in May 2023

ANNEX I

ADDITIONAL RESOURCES

UNIDROIT Instruments

UNIDROIT, UNIDROIT Convention on International Factoring (1988)
https://www.unidroit.org/english/conventions/1988factoring/convention-factoring1988.pdf

UNIDROIT, Explanatory Note on the Factoring Convention (2011)
https://www.unidroit.org/explanatory-report-factoring-1988

UNIDROIT, UNIDROIT Model Law on Leasing (2008)
https://www.unidroit.org/english/documents/2008/study59a/s-59a-17-e.pdf

UNIDROIT, Official Commentary to the UNIDROIT Model Law on Leasing (2010)
https://www.unidroit.org/explanatory-model-law-leasing-2008/english

UNCITRAL Instruments

UNCITRAL, United Nations Convention on the Assignment of Receivables in International Trade (2001) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ctc-assignment-convention-e.pdf

UNCITRAL, UNCITRAL Legislative Guide on Secured Transactions (2007)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/09-82670_ebook-guide_09-04-10english.pdf

UNCITRAL, Supplement on Security Rights in Intellectual Property (2010)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/10-57126_ebook_suppl_sr_ip.pdf

UNCITRAL, UNCITRAL Guide on the Implementation of a Security Rights Registry (2013)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/security-rights-registry-guide-e.pdf

UNCITRAL, UNCITRAL Model Law on Secured Transactions (2016)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf

UNCITRAL, UNCITRAL Model Law on Secured Transactions: Guide to Enactment (2017)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlst_guide_to_enactment_e.pdf

UNCITRAL, UNCITRAL Practice Guide to the Model Law on Secured Transactions (2019)
https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-10910_e.pdf

UNCITRAL, HCCH and UNIDROIT, UNCITRAL, Hague Conference and UNIDROIT Texts on Security Interests (2012) https://www.unidroit.org/english/publications/joint/securityinterests-e.pdf

Other Instruments

AFREXIMBANK, AFREXIMBANK Model Law on Factoring (2016) https://s3-eu-west-1.amazonaws.com/demo2.opus.ee/afrexim/Model-Law-on-Factoring.pdf

FCI, Factoring Model Law (2014)
file:///C:/Users/wbryd/OneDrive/UNIDROIT/Factoring%20Model%20Law/model-factoring-law-cv-140221.pdf

Global SCF Forum, Standard Definitions for Techniques of Supply Chain Finance (2016)
https://iccwbo.org/content/uploads/sites/3/2017/01/ICC-Standard-Definitions-for-Techniques-of-Supply-Chain-Finance-Global-SCF-Forum-2016.pdf

OAS, Model Inter-American Law on Secured Transactions (2002)
https://www.oas.org/dil/Model_Law_on_Secured_Transactions.pdf