

July 2024

Commodities in Focus Weekly – issue 86

UNCITRAL adopts UNCITRAL/UNIDROIT Model Law on Warehouse Receipts

On 27 June 2024, the United Nations Commission on International Trade Law ("**UNCITRAL**") announced its adoption of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts ("**MLWR**") at its 57th session in New York.¹ In this update, we will (i) revisit the legal status of warehouse receipts under English law; and (ii) provide an overview on the MLWR before its final text is published.

Warehouse receipts

Warehouse receipts generally refer to documents issued by warehouse operators to depositors confirming the receipt and storage of goods. They usually contain information about the characteristics of the goods being stored, such as quantity, description and type. Warehouse receipts are commonly used in trade and commodity finance, notably in "repo" transactions.

In recent years, warehouse receipts have been featured in several high-value and high-profile fraud cases involving traders and financial institutions, including the aluminium and refined copper fraud case in Qingdao which surfaced in 2014, involving fake warehouse receipts and certificates, the nickel fraud cases in 2016, involving forged warehouse receipts, and allegations of financing fraud at aluminium warehouses in Guangdong in 2022. It goes without saying that care should be taken when

any financing is provided on the basis of warehouse receipts.

Status of warehouse receipts under English law

While frauds involving warehouse receipts have resulted in a number of cases heard in the English courts in recent years², the role of a warehouse receipt "*has not been definitively determined as a matter of English law*"³, except that it is clear that:

- 1) in the common law sense, a warehouse receipt is not a document of title (thus not a negotiable instrument); and
- 2) the relationship between a warehouse and someone with a higher right to possession of goods (including the person depositing the goods in the first instance) is that of a bailment.⁴

The MLWR

With the aim to provide a well-functioning warehouse receipt system to foster transactions and facilitate access to finance, the International Institute for the Unification of Private Law ("**UNIDROIT**") and the UNCITRAL have joined forces in developing a legal framework covering all the essential aspects necessary to regulate the private law side of a warehouse receipts system, with a focus on the financing function of warehouse receipts, since 2020.⁵ It is expected that the harmonisation of warehouse receipt laws will reduce

¹ United Nations Information Service, "UNCITRAL/UNIDROIT Model Law on Warehouse Receipts adopted by the United Nations Commission on International Trade Law" (27 June 2024) <<https://unis.unvienna.org/unis/pressrels/2024/unisl358.html>> accessed 9 July 2024.

² For example, (i) *Mercuria Energy Trading Pte Ltd v Citibank NA* [2015] 1 CLC 999, (ii) *Natixis S.A. v Marex Financial and Access World Logistics (Singapore) Pte Ltd* [2019] EWHC 2549 (Comm), and (iii) *ED&F Man Capital Markets Limited v Come Harvest*

Holdings Limited and others [2022] EWHC 229 (Comm) and [2022] EWCA Civ 1704.

³ *Natixis S.A. v Marex Financial and Access World Logistics (Singapore) Pte Ltd* [2019] EWHC 2549 (Comm) [226].

⁴ *ibid.*

⁵ UNIDROIT, *Adoption of Draft UNIDROIT instruments (a) Model Law on Warehouse Receipts* (UNIDROIT 2023 102nd session C.D. (102) 4 rev) <<https://www.unidroit.org/wp-content/uploads/2023/05/C.D.-102-4-rev-Model-Law-on-Warehouse-Receipts.pdf>> para. 3, accessed 9 July 2024.

barriers to regional and international markets.⁶ After 4 years of development, the UNCITRAL announced that it had adopted the MLWR in late June 2024. It is expected that the final text of the MLWR will be made available by the end of 2024.

Based on the latest draft MLWR made available to the public⁷, the MLWR contains provisions relating to the private law aspects of warehouse receipt systems, being the issuance and transfer of warehouse receipts and the rights and obligations of the parties in a transactional context, while leaving out regulatory provisions such as those generally included in a warehouse receipt system law, such as licensing, supervision and insurance requirements.⁸ More importantly, the MLWR does not include any requirement that would limit its application to any particular type or goods or sector.

To promote efficiency and cost-effectiveness in transactions, the MLWR recognises both traditional paper-based and electronic warehouse receipts, which are deemed as "functionally equivalent" under the MLWR.⁹

Furthermore, in an effort to enhance the credibility of the warehouse receipt system and facilitate credit access, the scope of the MLWR extends to (i) both negotiable and non-negotiable warehouse receipts and (ii) both the transfer of and creation of security over negotiable warehouse receipts.¹⁰

Lastly, an optional chapter on "pledge bonds" has also been included to enable the MLWR to apply to both single and dual warehouse receipt systems for countries to adopt them as appropriate. In a single warehouse receipt system, only one warehouse receipt is issued for the deposited goods. In a dual warehouse receipt system, the warehouse operator issues a warehouse receipt and a pledge bond. The pledge bond grants its holder a security right in the goods covered by the warehouse receipt, and the

rights of the warehouse receipt holder are subject to the rights of the pledge bond holder.¹¹ The latter system is more common in civil law countries, particularly those in South America.¹²

Differences and similarities between the MLWR and the UNCITRAL Model Law on Electronic Transferable Records

From the outset, it appears that the MLWR and the UNCITRAL Model Law on Electronic Transferable Records (adopted in 2017) ("**MLETR**") aim to tackle similar issues, though this is not entirely accurate.

While the MLETR primarily seeks to enable the use of electronic versions of transferable instruments, such as bills of lading, bills of exchange, promissory notes and warehouse receipts legally¹³, the MLWR focuses on boosting confidence in the warehouse receipt system through standardising rules relating to their issuance and the transfer of both paper-based and electronic warehouse receipts.¹⁴ Specifically, the MLWR seeks to improve access to and lower the cost of credit by enabling warehouse receipts to serve as collateral to promote short-term financing, particularly for the agricultural sector and small enterprises in states that currently do not have enabling warehouse receipt laws.¹⁵

Nevertheless, to align with the MLETR, the MLWR adopts a jurisdiction-neutral, medium-neutral, and technology-neutral approach. Jurisdictions wishing to enable the use of electronic warehouse receipts without modifying existing law may adopt the MLETR, while those who have adopted the MLETR but are missing a warehouse receipt law may implement the MLWR.¹⁶

⁶ UNCITRAL, *Draft guide to enactment of the UNCITRAL/UNIDROIT model law on warehouse receipts* (UNCITRAL 2024 41st session A/CN.9/WG.I/WP.134) <<https://undocs.org/en/A/CN.9/WG.I/WP.134>> para. 19, accessed 9 July 2024.

⁷ UNCITRAL, *Draft model law on warehouse receipts* (UNCITRAL 2024 41st session A/CN.9/WG.I/WP.133) <<https://undocs.org/en/A/CN.9/WG.I/WP.133>>, accessed 9 July 2024.

⁸ UNCITRAL, *Draft guide to enactment of the UNCITRAL/UNIDROIT model law on warehouse receipts* (UNCITRAL 2024 41st session A/CN.9/WG.I/WP.134) <<https://undocs.org/en/A/CN.9/WG.I/WP.134>> para. 21, accessed 9 July 2024.

⁹ *ibid* 23.

¹⁰ *ibid* 24-25.

¹¹ *ibid* 32.

¹² *ibid* 26.

¹³ UNCITRAL Model Law on Electronic Transferable Records (2017)

¹⁴ United Nations Information Service, "UNCITRAL/UNIDROIT Model Law on Warehouse Receipts adopted by the United Nations Commission on International Trade Law" (27 June 2024)

<<https://unis.unvienna.org/unis/pressrels/2024/unisl358.html>> para. 1, accessed 9 July 2024.

¹⁵ UNIDROIT, *Draft Guide to Enactment of the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts* (UNIDROIT 2023 Study LXXXIIIA – W.G.1 – Doc. 2)

<<https://www.unidroit.org/wp-content/uploads/2023/11/Study-LXXXIIIA-W.G.1-Doc.-2-Draft-Guide-to-Enactment-to-the-MLWR.pdf>> para. 15 – 16, accessed 9 July 2024.

¹⁶ UNCITRAL, *Report of Working Group I (Warehouse Receipts) on the work of its forty-first session* (UNCITRAL 2024 41st session A/CN.9/1165) <<http://undocs.org/en/A/CN.9/1165>> para. 13, accessed 9 July 2024.

Observations

Overall, the adoption of the MLWR by the UNCITRAL is welcomed. However, as with other UNICITRAL rules, local implementation of the MLWR is necessary. Recent examples of local implementation include the adoption of the MLETR by the UK (via its Electronic Trade Documents Act 2023) and Singapore (via its Electronic Transactions Act 2010 (as amended by Electronic Transactions (Amendment) Act 2021)). Whether common law jurisdictions such as the UK and Singapore will also implement the MLWR remains to be seen. Before local implementation, market participants (at least within common law jurisdictions) would be advised to continue being mindful of the uncertainties on the legal status of warehouse receipts.

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