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Factoring Model Law Working Group

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ISSUES PAPER

1. This document provides a preliminary discussion of issues that the Factoring Model Law Working Group may wish to consider in preparing the Model Law.
2. The issues considered in this document were identified by either (i) Working Group experts during an informal meeting in Cartagena in February 2020, (ii) the Chair of the Working Group or (iii) the Secretariat. The document is not intended to provide an exhaustive list of issues or a full legal analysis of each issue. The purpose of the document is to provide a starting point for the Working Group's deliberations and a structure for discussions at the first session.
3. The document is divided into three sections: (i) preliminary matters, (ii) scope of the Model Law and (iii) content and structure of the Model Law. The document also contains an annex that provides links to relevant documents to assist the Working Group. In some sections, the document provides a number of questions that the Working Group may wish to consider. This document should be considered in conjunction with Study LVIII A – W.G.1 – Doc. 3, which provides further background analysis on relevant international instruments and domestic factoring laws.
4. The Secretariat is grateful to the Kozolchyk National Law Center (NatLaw) for its assistance in the preparation of this document.

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I. PRELIMINARY MATTERS

A. Background

5. 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. UNCITRAL Model Law on Secured Transactions, 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.

6. At its 98th session in May 2019, the UNIDROIT Governing Council approved the project for the 2020-2022 Triennial Work Programme.¹

7. 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.

B. Format of the Model Law

8. The Factoring Model Law will consist of a set of black letter rules, accompanied by a limited commentary on each rule to explain its operation. This approach is consistent with the other 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.²

9. During the informal Cartagena meeting several experts queried whether the Working Group would also need to develop more detailed implementation documents, such as a Guide to Enactment, as consistent with the practice of some UNCITRAL Working Groups. As the timeframe for the development and adoption of the Model Law is only three years, it is anticipated that the Working Group will only initially have sufficient time to prepare the Model Law itself and a limited commentary. Once the Model Law has been adopted in 2023, the UNIDROIT Governing Council could consider whether the mandate of the Working Group should be extended to prepare additional implementation documents, depending on whether there is an identified need for such materials.

C. Target Audience

10. 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.

¹ UNIDROIT 2019 C.D. (98) 17, p. 36.

² The Model Law on Leasing and accompanying commentary is available at: <https://www.unidroit.org/explanatory-model-law-leasing-2008/english>.

11. 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.

D. Title of the instrument

12. It is anticipated that the formal title of the instrument will be the 'UNIDROIT Model Law on Factoring'. However, it was suggested during the Cartagena meeting that this title might be unduly limiting or misleading, on the basis that the Model Law may apply to other receivables transactions beyond factoring, such as securitisation.

Questions for the Working Group:

- *Is the proposed title "UNIDROIT Model Law on Factoring" appropriate or should a broader title be considered (it may be prudent to revisit this question once the Working Group has discussed the scope of the instrument)?*

E. Terminology

Use of Standard Definitions

13. It is suggested that the Model Law and other documentation produced by the Working Group builds on the "Standard Definitions for Techniques of Supply Chain Finance (SCF)",³ as adopted by the Global Supply Chain Finance Forum.⁴

14. 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.

Consistency of terminology with existing instruments

15. 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 below table sets out the different language used for several core concepts in four instruments that have been adopted over the past 30 years.

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

⁴ 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.

Factoring Convention (1988)	Receivables Convention (2001)	Secured Transactions 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

F. Composition of the Working Group

16. 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:

- (i) Henry Gabriel (Chair) (United States)
- (ii) Giuliano Castellano (Italy)
- (iii) Michel Deschamps (Canada)
- (iv) Neil Cohen (United States)
- (v) Louise Gullifer (United Kingdom)
- (vi) Alejandro Garro (Argentina)
- (vii) Megumi Hara (Japan)
- (viii) Catherine Walsh (Canada)
- (ix) Bruce Whittaker (Australia)

17. UNIDROIT has also invited a number of intergovernmental organisations with expertise 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:

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

18. 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:

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

G. Methodology and Organisation

19. 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.

20. 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 entire project during this Work Programme.

- (i) Drafting of the Model Law over four sessions 2020-2021
 - a. First session: 1-3 July 2020 (remote)*
 - b. Second session: 30 Nov–2 December or 14–16 December 2020 (tbc)*
 - c. Third session: First half of 2021*
 - d. Fourth session: second half of 2021*
- (ii) Consultations and finalisation 2022
- (iii) Adoption by the Governing Council at its 102nd session in May 2023

II. SCOPE OF THE MODEL LAW

A. Relationship with existing instruments

21. Over the past three decades, intergovernmental organisations have been active in adopting uniform instruments in the secured transactions field, several of which apply to factoring and other types of receivables financing. Private sector associations have also prepared model laws on factoring.

22. While the Model Law is being developed to address a specific need in States that wish to reform their domestic factoring laws, it is essential that the Factoring Model Law is coordinated with existing instruments in the field. This section briefly introduces the main international instruments that regulate certain elements of factoring and highlights issues which the Working Group may need to consider.

UNIDROIT Convention on International Factoring

23. *The UNIDROIT Convention on International Factoring* was adopted at a diplomatic conference in Ottawa, Canada, on May 28, 1988, and came into force on May 1, 1995. Nine States have ratified the Convention.⁵

24. The Convention is quite limited in its application to “international” factoring contracts. The Convention governs the assignment of receivables that arise from a contract of sale of goods between a supplier and a debtor whose respective places of business are located in different States that are Contracting States to the Convention.⁶ In addition, for the Convention to apply, the law of a Contracting State must govern both the factoring contract and the contract for sale of goods.⁷

25. Nonetheless, parties to a factoring contract may exclude the application of the Convention.⁸ Parties to a contract for sale of goods may also exclude the application of the Convention with respect to receivables that arise at or after the time when the factor has been given written notice of such exclusion.⁹

26. The Convention applies to “factoring contracts” concluded between one party (the supplier) and another party (the factor), pursuant to which the supplier may or will assign to the factor receivables arising from contracts for sale of goods between the supplier and its customers (debtors) other than those for the sale of goods bought primarily for their personal or household use. The factor is to perform at least two of the following functions, (i) finance for the supplier, (ii) maintenance of accounts relating to the receivables, (iii) collection of receivables and (iv) protection against default in payment by debtors. The Convention applies only to notification financing, requiring a notice of the assignment of the receivables to be given to debtors. Although the Convention refers to “goods” and “sale of goods,” those terms encompass contracts for services and the supply of services.¹⁰ The Convention applies to both existing and future receivables.

⁵ Belgium, France, Germany, Hungary, Italy, Latvia, Nigeria, Russia, and Ukraine. *Status - UNIDROIT Convention on International Factoring* (Ottawa, 1988), <https://www.unidroit.org/status-1988-factoring>.

⁶ Article 2.

⁷ *Id.*

⁸ Article 3(1).

⁹ *Id.*

¹⁰ Article 1(3).

27. The Convention is applicable to most traditional forms of factoring as described above, with the exception of non-notification factoring, and is restricted to what may be termed "commercial" factoring in view of the exclusion of consumer receivables.

28. Among other key provisions, Article 6(1) of the Convention overrides the application of anti-assignment clauses in the underlying contract that gave rise to receivables. However, the Convention provides an avenue for Contracting States to opt out of the application of Article 6(1).¹¹ Essentially, a Contracting State can make a declaration that an assignment made in contravention of an anti-assignment clause has no effect against a debtor if, at the time the contract for sale of goods is concluded, the debtor has its place of business in that State.

29. A debtor may exercise against the factor all defences arising under the contract that it would have been entitled to raise against the supplier.¹² This is in addition to any rights of set-off the debtor has against the supplier at the time notice of the assignment is received, which may also be raised against the factor.¹³

30. Under the Convention, the debtor is obligated to pay the factor if the debtor is unaware of any superior right to payment and receives written notice of the assignment from the supplier or the factor (with the supplier's authorisation).¹⁴ The notice must reasonably identify the assigned receivables and the factor to whom payment is to be made, but must also relate to receivables arising under a contract for sale of goods made before or at the time the notice is given.¹⁵

Relationship with the future Factoring Model Law

31. The Model Law will apply to domestic factoring rather than being limited to international factoring adopted by the Factoring Convention. Further, the types of factoring transactions to which the Model Law will apply may also be broader than the narrow focus of the Factoring Convention, which excludes non-notification factoring.

United Nations Convention on the Assignment of Receivables in International Trade

32. The United Nations Convention on the Assignment of Receivables in International Trade (Receivables Convention) was adopted by the UN General Assembly on December 12, 2001¹⁶ to promote the availability of capital and affordable credit for the cross-border trade of goods and services. The Receivables Convention has been ratified by two States and will enter into force once five States have ratified it.¹⁷

33. The Receivables Convention provides certainty on major legal issues that arise under different receivables financing arrangements in global commerce, including asset-based lending, factoring, invoice discounting, and more.¹⁸ The Receivables Convention applies to both assignments

¹¹ Article 18. Three of the ratifying States submitted this declaration; Belgium, France and Latvia.

¹² Article 9(1).

¹³ Article 9(2).

¹⁴ Article 8(1).

¹⁵ Article 8(1).

¹⁶ UNCITRAL, *United Nations Convention on the Assignment of Receivables in International Trade* (2001), <https://www.uncitral.org/pdf/english/texts/payments/receivables/ctc-assignment-convention-e.pdf>. Prepared by the United Nations Commission on International Trade Law, it was adopted by resolution 56/81 of December 12, 2001.

¹⁷ Liberia and the United States. *Status: United Nations Convention on the Assignment of Receivables in International Trade*, UNCITRAL, <https://uncitral.un.org/en/texts/securityinterests/conventions/receivables/status>

¹⁸ UNCITRAL, *United Nations Convention on the Assignment of Receivables in International Trade* (2001): Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on the Assignment of

of international receivables and international assignment of receivables if, at the time the contract of assignment is concluded, the assignor is located in a Contracting State.¹⁹ For the purpose of the Receivables Convention, a receivable is international if, at the time the original contract is concluded, the assignor and debtor are located in different states.²⁰ Similarly, an assignment is international if, at the time of conclusion of the assignment, the assignor and assignee are located in different states.²¹ The receivables may arise from a range of transactions, including contracts for the supply of goods, construction and services, contracts for the sale or lease of real property, loan receivables, intellectual property royalties, and monetary damages for breach of contract.²² However, the Receivables Convention does not apply to non-contractual payment rights such as tort claims or tax refunds, or special types of contractual transfers that relate to foreign exchange transactions, bank deposits, and letters of credit, among others.²³

34. Like the UNIDROIT Factoring Convention, the Receivables Convention overrides the application of anti-assignment clauses in the underlying contract from which the receivables arise.²⁴ This is necessary to facilitate the assignment of bulk and future receivables, without the need to investigate each receivable to ascertain whether consent of the debtor is required, and in turn enables the utilisation of other financing practices such as securitisation. However, it limits the availability of this override to certain assignments of receivables and preserves the liability of the assignor for breach of the underlying contract, even though the debtor may not avoid the assignment on the basis of that breach.²⁵

35. The Receivables Convention preserves the right of the debtor to raise any defences or rights of set-off arising from the original contract that it could have raised against the assignor.²⁶ Nonetheless, the assignor may enter into a separate agreement with the debtor to forgo against the assignee, the defences and rights of set-off that it could raise.²⁷ No similar provision is contained in the UNIDROIT Factoring Convention. The debtor must sign such an agreement, but the debtor cannot waive any defences that arise from fraudulent acts of the assignee or that are based on the debtor's incapacity.²⁸

36. The Receivables Convention reinforces party autonomy in Article 6, which provides that an assignor, assignee, and debtor may vary, by agreement, the provisions of the Convention that affect their respective rights and obligations. In the absence of a contrary agreement between the parties, the Receivables Convention attributes certain representations to an assignor, including that (i) the assignor has the right to assign the receivables; (ii) the receivables have not been previously assigned by the assignor; and (iii) the debtor will not have any defences or right of set-off.²⁹ These representations are aimed at protecting the assignee's interest in the receivables, to reduce the risk of non-payment.

Receivables in International Trade, p. 27, <https://www.uncitral.org/pdf/english/texts/payments/receivables/ctc-assignment-convention-e.pdf>.

¹⁹ Article 1(1)(a), Receivables Convention.

²⁰ Article 3, Receivables Convention.

²¹ *Id.*

²² United Nations Convention on the Assignment of Receivables in International Trade (2001): Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on the Assignment of Receivables in International Trade, supra n 18, p. 29.

²³ *Id.*; Article 4(2), Receivables Convention.

²⁴ Article 9(1), Receivables Convention.

²⁵ Article 9(2) and (3), Receivables Convention.

²⁶ Article 18, Receivables Convention.

²⁷ Article 19(1), Receivables Convention.

²⁸ Article 19(2), Receivables Convention.

²⁹ Article 12, Receivables Convention.

37. One of the Annex options to the Receivables Convention anticipates the creation of an international registry for the registration of data related to assignments.³⁰ This would facilitate the easy determination of priority between competing assignees or claimants of an international receivable. It grants the registrar and the supervising authority the power to issue regulations for the implementation of the registry.³¹ While other options are presented to the States as well, registration has become the norm for establishing the priority of conflicting assignments.

38. Article 38(2) provides that the Receivables Convention prevails over the Factoring Convention, unless the Receivables Convention does not apply to the rights and obligations of the debtor.

Relationship with the future Factoring Model Law

39. As the Receivables Convention was adopted 13 years after the Factoring Convention, it provides a broader, more sophisticated and detailed international framework for receivables financing. The broader scope of the Receivables Convention in relation to the types of assignments to which it applies might provide a useful starting point in relation to the scope of the Factoring Model Law. Further, the use of an Annex to set out the registry rules might be a useful mechanism the Working Group may wish to discuss.

The UNCITRAL Model Law on Secured Transactions

40. Adopted in 2016, the purpose of the Secured Transactions Model Law is to assist States in developing a modern secured transactions law dealing with security rights in movable assets. The Secured Transactions Model Law was developed following earlier work at UNCITRAL on a Legislative Guide on Secured Transactions (2007), a Supplement on Security Rights in Intellectual Property (2010) and a Guide on the Implementation of a Security Rights Registry (2013).

41. The Secured Transactions Model Law is designed to increase the availability of credit at more affordable rates by providing an effective and efficient secured transactions law.³² The Secured Transactions Model Law provides a functional, integrated and comprehensive approach to secured transactions. The comprehensive nature of the instrument makes it necessarily complex. Building upon the 568-page Legislative Guide on Secured Transactions (2007), the Secured Transactions Model Law has 107 Articles and is accompanied by a 194-page Guide to Enactment (2017) as well as a 144-page Practice Guide (2019). The Legislative Guide, Model Law, Guide to Enactment and Practice Guide provide a wealth of detail for States and has influenced secured transactions reforms in many jurisdictions.

Relationship with the future Factoring Model Law

42. The Secured Transactions Model Law applies to receivables and provides a number of asset-specific rules in dealing with receivables. It is suggested that many of the receivables rules could be taken from the Secured Transactions Model Law for use in the Factoring Model Law. The extent to which the Factoring Model Law should borrow directly and adapt rules from the Secured Transactions Model Law is one of the core issues that the Working Group will have to address.

³⁰ *Id.*

³¹ Section II, Article 3, Annex to the Receivables Convention.

³² UNCITRAL, Model Law of Secured Transactions: Guide to Enactment, paragraph 5.

Model Laws prepared by other entities

43. In addition to the instruments produced by UNIDROIT and UNCITRAL, model laws on factoring have also been produced by other entities.

44. In 2014 the FCI and IFG produced a Factoring Model Law, which mainly adopts the concepts and wording of the Receivables Convention. The FCI Model Law is a relatively simple 27 article instrument which strives to be shorter, less complex and easy to implement.

45. In 2016 the African Export-Import Bank (AFREXIMBANK) produced a Factoring Model Law which built upon the 2014 FCI Model Law. The AFREXIMBANK Model Law also draws heavily from the Receivables Convention, although adopts a narrower scope of application, focusing on factoring, including non-notification factoring, invoice discounting and payables finance (reverse factoring). The instrument also does not cover the procedure for assignments, the constituents of different factoring products, regulation of factoring companies or taxation issues.

B. Types of receivables to be covered

Contractual Rights of Payment

46. A receivable is generally a contractual right to payment of a monetary sum.³³ Examples of contractual rights include claims arising from contracts for supply of goods or services, regardless of whether it is a commercial or consumer contract, contracts for the sale or lease of real property, loan receivables, intellectual property royalties, and monetary damages for breach of contract.³⁴ By definition however, rights to payment arising other than by contract, such as tort claims or tax refund claims, are not included.

47. Rights to payment may exist as pure intangibles, may be evidenced in invoices that do not embody the right, or in negotiable instruments that effectively embody/reify the underlying right to payment. Generally, receivables are defined to exclude rights to payment embodied in negotiable instruments that are governed by separate laws or sets of rules, such as in secured transactions laws. When a receivable is embodied in an instrument that is transferred, the financing product is not factoring, but forfaiting. The International Chamber of Commerce issued a set of uniform rules on forfaiting governing the rights and duties arising in such financing relationships.³⁵ Receivables may also be traded on exchanges established for that specific purpose. Commercial aspects of exchange-transactions are governed by the same set of rules that govern ordinary assignments of receivables, as supplemented by the contractual frameworks established by the exchange operators. Furthermore, the exchange operator as well as financial institutions participating in those transactions may need to comply with additional sets of regulatory requirements.

Statutory Definitions

48. Article 2 of the Secured Transactions Model Law defines receivable as “*a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a bank account and a right to payment under a non-intermediated security.*” The UNIDROIT Factoring Convention does not include a definition of receivable, but by virtue of Article 1(2)(a), it applies to *receivables arising from contracts of sale of goods made between the*

³³ UNCITRAL Legislative Guide on Secured Transactions (2007), p. 38.

³⁴ *Id.*

³⁵ See further https://2go.iccwbo.org/uniform-rules-for-forfaiting-urf800-english-version+book_version-Ebook. The Uniform Rules for Forfaiting were endorsed by UNCITRAL.

supplier and its customers (debtors) other than those for the sale of goods bought primarily for their personal, family or household use.

49. Accordingly, receivables may be defined very broadly as covering any type of contractual rights to payment (subject to delineating other types of payment with respect to which the law provides for specific rules (e.g., bank accounts)) or more narrowly to rights to payment that are common in the particular industry for which the law is designed (e.g., factors). The exclusion of certain types of payment means that they will be classified as either a special right to payment (e.g., a bank account) or governed by a set of rules that apply to some residual category of intangible rights (e.g., general intangibles).

50. Many countries do not provide for a specific definition of receivables in their Civil Codes, Commercial Codes, or other laws. Rather, the notion of what constitutes a receivable is extrapolated from related provisions in those codes or from judicial pronouncements, leading to definitions that regularly include a broad range of debts within the meaning of receivables. In some countries, standalone secured transactions statutes have been enacted that provide a definition. This is the case in many countries that have undertaken secured credit law reforms over the past decade, some of which adopt definitions closely related to those found in UNCITRAL instruments.

Government Receivables

51. Receivables may be owed by commercial parties, consumers, but also public sector entities. Such receivables may benefit from high credit rating, which reduces the capital requirements of the factor or lender. However, some laws may require the satisfaction of special requirements for the effective transfer of such a receivable (e.g., a particular form of notification) or do not apply some provisions that facilitate transfers, such as those that override the effect of anti-assignment clauses.³⁶ The governmental receivables debtor may also be precluded, by applicable regulations, from waiving certain provisions of the law that governs transfers of the receivables that it owes.

Questions for the Working Group:

- *How broadly/narrowly should the Model Law define a receivable, assuming a definition is needed (e.g., limited to trade receivables)?*
- *Should this question be revisited at a later point against the set of actual rules to see whether they are appropriate for particular types of receivables?*
- *Should States be invited to consider and identify the types of rights to payment that they wish to cover in their domestic legislation with some guidance provided in the related commentary?*

C. Exclusion of certain transfers (such as for the sole purpose of collection)

52. Even where laws include a broad definition of a receivable, their application may be limited either entirely or with respect to some aspects. By virtue of Art. 1(3)(d), the Secured Transactions Model Law does not apply to “payment rights arising under or from financial contracts governed by netting agreements”. Other laws do not apply to assignments for collection purposes only or as part of a sale of the business out of which they arose.³⁷ The Secured Transactions Model Law does not provide for these types of exclusions, but enacting States are not precluded from incorporating such and other limitations from the scope. Accordingly, the application of factoring or secured transactions

³⁶ A recent decision of the Spanish Supreme Court introduced some uncertainty into the possibility to assign such receivables before the goods or services have been delivered/provided.

³⁷ See further para 23 of the Guide to Enactment to the Secured Transactions Model Law.

laws may affect certain established practice where, for instance, the satisfaction of registration requirements for perfection is not expected, or where that would not serve a useful purpose (e.g., where the sole purpose of assignment is to facilitate collection rather than provision of financing).

Questions for the Working Group:

- *Should certain types of assignments, particularly those that do not perform any financing function be excluded?*
- *Should States be invited to consider and identify the types of transactions that they wish to exclude from their domestic legislation with some guidance provided in the related commentary?*

D. Application to outright assignments/transfers (sales) vs security interests

53. Some secured transactions laws apply to assignments of receivables as security, while others apply to “security assignments” as well as to the outright transfer of receivables by agreement, which would include factoring. In the former jurisdictions, the outright transfer of receivables is governed by the general contract or commercial law under which generally the transfer is effective against third parties without any form of registration. Both types of transfers are covered by the Secured Transactions Model Law and the UN Convention on the Assignment of Receivables in International Trade. This of course is also the case in many domestic laws, including the laws of the United States, Canada, and Australia. The main reason for such uniform treatment are very little differences between the two types of transfer.

54. Receivables may also be assigned to a trust or in a similar fashion that makes the transferee a fiduciary owner of the receivable with a duty to re-transfer the receivable upon satisfaction of some obligations.

55. Generally, courts have the power to assess the economic substance of the transfer and re-characterise an outright transfer as one made in security, especially based on the nature of recourse retained by the putative buyer (see the section on recourse vs non-recourse transfers below). Even where the same law does not apply to outright transfers of receivables, prudent buyers of receivables may want to satisfy the requirements of the law governing security assignments, especially registration to get protection in case of re-characterisation.

Questions for the Working Group:

- *In light of the international best practice of covering various types of transfers of receivables, are there any reasons to limit the application of the Model Law to security interests or outright transfers only?*
- *If both transfers are covered, should the rules apply equally or some exceptions, in addition to enforcement with respect to outright transfers, be considered?*

E. Recourse vs Non-Recourse

56. It is often the case that in an outright transfer of receivables the assignee will seek to reduce the risk of loss from non-payment by the receivables-debtor. One way to achieve this is by including a provision in the transfer agreement that allows the assignee to charge back purchased accounts to the assignor in the event of a financial inability to pay on the part of the receivables-debtor, when

payment is due.³⁸ In factoring parlance, this feature is generally known as recourse. Under the Standard Definitions, “recourse factoring” is where the finance provider has recourse to the seller in the case of buyer default.

57. Recourse provisions that shift all risk to the assignor have been held by courts to be the element that distinguishes whether to treat an agreement to transfer accounts receivable as a security interest rather than an outright sale.³⁹ What is important is not what the recourse itself is necessarily, but that it burdens the assignor with substantially all the risk associated with the transferred accounts. In contrast to a true sale, an assignee that enjoys such recourse incurs none of the risks or obligations of ownership. Courts have identified such risks to include, among others, the failure of the debtor to make payments, disputes and claims by the debtor, invalidity of the receivables, and increases in prevailing interest rates.

58. Notwithstanding the above, recourse is permitted for a seller’s breach of standard representations, warranties, and covenants with respect to the transferred receivables, including a failure to keep the accounts free of dilution.⁴⁰ Such recourse should not affect the classification of the transaction as a true sale. For the purpose of the Model Law, recourse against the assignor for non-collection refers only to recourse arising from the financial inability of the receivables-debtor to pay i.e., default due to credit reasons.⁴¹

59. Recommendation 3 of the Legislative Guide provides that “*the law should apply to outright transfers of receivables despite the fact that such transfers do not secure the payment or other performance of an obligation*”. This recommendation is subject to Recommendation 167, which provides that “*the law should provide that the recommendations in this chapter (enforcement of a security right) do not apply to the collection or other enforcement of a receivable assigned by an outright transfer, with the exception of (a) Recommendations 131 and 132 in the case of an outright transfer with recourse*”.⁴² The enforcement of outright transfers of receivables with recourse is thus to follow the rules for the enforcement of security rights in receivables.

60. The issue of recourse is not dealt with directly in the FCI Factoring Model Law, although a footnote to Article 1 (scope of application) provides that “national legislators are invited to adapt the scope [of the Model Law] to the specific legal environment, and should ascertain that recourse and non-recourse factoring are included”. Further, Article 11.2 (Representations of the assignor) provides that “unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay”. The footnote to Article 11.2 explains that in the absence of an agreement between assignor and assignee, the assignee bears the default risk of the debtor. As such, the FCI Model Law indirectly reflects a presumption of non-recourse factoring.

³⁸ See David Tatge and Jeremy Tatge, *Fundamentals of Factoring*, PRACTICAL LAW THE JOURNAL (September 2012), 58.

³⁹ See *Major's Furniture Mart, Inc. v. Castle Credit Corp., Inc.*, 602 F.2d 538, 544-45 (3d Cir. 1979) where, in finding evidence of recourse indicative of a security interest rather than a true sale, the court held that the assignee “attempted to shift all risks to [the assignor], and incur none of the risks or obligations of ownership. [Assignee] only assumed the risk that the assignor itself would be unable to fulfill its obligations.” See also *Lange v. Inova Capital Funding, LLC (In re Qualia Clinical Serv., Inc.)*, 441 B.R. 325, 329-31 (B.A.P. 8th Cir. 2011), where the bankruptcy court noted that the recourse provision “completely shifts the risk of the uncollectibility of the account to [the assignor], despite the agreement’s characterization as a ‘sale.’”

⁴⁰ Haywood Barnes, *Are Factoring Transactions True Sales? Should Factors Care?*, JD Supra, <https://www.jdsupra.com/post/contentViewerEmbed.aspx?fid=b5c85ae7-2314-47a2-ab7f-0438b7f3229a>.

⁴¹ See generally, *id.*

⁴² Recommendation 131 provides: “The law should provide that a person must enforce its rights and perform its obligations under the provisions on enforcement in good faith and in a commercially reasonable manner.” Recommendation 132 provides: “The law should provide that the general standard of conduct provided in recommendation 131 cannot be waived unilaterally or varied by agreement at any time.”

Questions for the Working Group:

- *Should the Model Law differentiate between recourse and non-recourse transfers with respect to the application of some of its provisions?*
- *Should the Model Law include some guidance on the type of recourse that would recharacterize the transaction as a security interest?*

F. Consumer Aspects

61. As mentioned above, receivables may be owed by consumers who frequently purchase goods or receive services on credit. Consumer may also be a beneficiary of a transfer of a receivable, though this is much less likely. Although the Receivables Convention applies to assignments of consumer receivables, assignments to a consumer are excluded.⁴³ The Model Law does not exclude assignments to a consumer, and applies to assignments of consumer receivables, but it defers to the applicable consumer protection legislation and other laws that may provide for rights of grantors and debtors of receivables in transactions made for personal, family, or household purposes.⁴⁴ Such legislation may restrict the right to create a security interest, or its enforcement, such as in case of receivables that are in the nature of employment benefits.

62. Some additional legal requirements may affect transfers of consumer receivables. For instance, when the receivables debtor is a consumer, the contract generating a receivable must be in writing or the consumer is given a statutory period (e.g., 14 days) to cancel a contract, such as for the sale of goods. In some jurisdictions, penalties are imposed for violations of consumer protection laws, including penalties that may affect the validity or enforceability of the receivables and give the receivables-debtor rescission rights.⁴⁵ The seller of the receivable may thus be required to give representations or warranties that it has complied with the applicable consumer protection laws.⁴⁶

63. Regulatory measures may also affect transfers of consumer receivables. Some laws (e.g., Egypt) expressly recognise a special category of retail factoring to which they apply special regulations, such as establishing a lower percentage of the capital base as compared to corporate receivables debtors. In some countries, factoring by non-bank companies does not require any prior licensing unless it involves consumer receivables. From the credit risk as well as regulatory perspectives, consumer receivables carry a higher risk associated with the difficulty and higher costs in collecting many small receivables.⁴⁷

Questions for the Working Group:

- *Should the Model Law exclude transactions with consumer receivables?*
- *Should the Model Law exclude transfers of receivables to consumers?*
- *Should the Model Law generally cover such transfers but defer to special legislation that may provide otherwise?*

⁴³ UNCITRAL, United Nations Convention on the Assignment of Receivables in International Trade (2001): Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on the Assignment of Receivables in International Trade, p. 27, <https://www.uncitral.org/pdf/english/texts/payments/receivables/ctc-assignment-convention-e.pdf>.

⁴⁴ See further para 30 of the Guide to Enactment.

⁴⁵ See, e.g., *Germany: Securitisation 2020*, INTERNATIONAL COMPARATIVE LEGAL GUIDES, <https://iclg.com/practice-areas/securitisation-laws-and-regulations/spain>.

⁴⁶ *Id.*

⁴⁷ Comptroller's Handbook, Accounts Receivable and Inventory Financing, 18, at <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/accts-rec-inventory-financing/pub-ch-accts-rec-inventory-financing.pdf>.

G. Factor additional functions

64. Factors may provide different services to their customers, including: (i) collection of receivables from debtors; (ii) sales accounting; and (iii) debtor's credit risk transfer. Handing over such functions to a factor often provides significant economic benefits to a small business, allowing them to grow while reducing the possibility of financial difficulty due to a substantial bad debt and reducing administrative expenses. Article 1(2) of the Factoring Convention conditions its application on the factor performing at least two of the following functions (i) finance for the supplier, including loans and advance payments;(ii) maintenance of accounts (ledgering) relating to the receivables;(iii) collection of receivables;(iv) protection against default in payment by debtors. Ledgering or sales ledger administration relieves the assignor, typically a small business, from having to record how much it is owed by its customers, but those needs may also be addressed by financial management software. Collection of receivables relieves the assignor from employing a full-time credit controller transferring the responsibility to the factor.⁴⁸ Protection against payment defaults is characteristic for non-recourse factoring that is alternative to credit insurance.

Question for the Working Group:

- *Should the Model Law apply only when several functions/services are performed or simply when there is a transfer of a receivable?*

H. Application to future receivables

65. In a typical receivables purchase or finance transaction, the factor or a lender would want to ensure that its rights extend to any receivables that arise after the execution of the relevant agreement providing for their transfer. This reduces transactional costs as a single agreement would suffice provided that receivables can be identified.⁴⁹ Provided the assignor and assignee agree on the scope of receivables assigned, no further formalities should be required for the assignment to be effective as between the parties.⁵⁰

66. Though some difference exists between legal systems with respect to the effectiveness of an assignment of future receivables, the modern trend is to recognise an assignment of future receivables as effective without the need for a new assignment for each future receivable.⁵¹ This principle was recognised already in Article 5(b) of the Ottawa Factoring Convention under which future receivables are transferred automatically to the factor, without any new act of transfer, when they arise. Pursuant to Article 6(2) of the Secured Transactions Model Law a security agreement may provide for the creation of a security right in a future asset, including receivables, but the security right is only created when the grantor acquires rights in the asset or the power to encumber it. This is the case under Article 8 of the Receivables Convention as well as under the OHADA Uniform Act on Securities and the laws of Argentina, France, Germany, Turkey, among others.

Question for the Working Group:

- *Are there any reasons for the Model Law to impose some requirements on the transfer of future receivables?*

⁴⁸ Simon Mills & Noel Ruddy, *Salinger on Factoring*, 34-35 (6th ed. 2020).

⁴⁹ UNCITRAL Legislative Guide on Secured Transactions (2007), p. 92.

⁵⁰ *Id.*

⁵¹ *Id.*

I. Anti-assignment clauses

67. Anti-assignment clauses may effectively prevent transfers of receivables precluding businesses from selling or encumbering such receivables. Receivable debtors may be approached to waive such clauses, but this could significantly increase transactional costs if the business seeks to encumber or sell multiple receivables owed by various receivable debtors. Provisions in laws that override the effect of anti-assignment clauses also facilitate transfers of receivables in bulk and those arising in the future. This may not be a concern for reverse factoring products where the receivables debtor approaches a financial institution to finance the receivables owed to the customers of the receivables debtor. A few approaches exist with respect to the effectiveness of anti-assignment clauses in the underlying contract that generates a receivable. Some legal systems generally uphold the validity of such clauses to protect the interests of the party in whose favour the clause has been included, thus respecting the principle of freedom of contract. In other jurisdictions, such clauses are generally ineffective with the goal to protect the assignor's freedom of disposition or to protect an assignee that is unaware of the restriction.

68. The international best practice advocates an approach aimed at liberalising the transferability of receivables to facilitate access to credit, especially for small and medium enterprises. Under this approach, anti-assignment clauses would be ineffective against the assignee but remain effective between the parties to the agreement, so that the receivables-debtor can bring a claim for breach against the assignor where such remedy is available under the relevant contract or commercial law. Article 6 of the Ottawa Factoring Convention, the Secured Transactions Model Law and the Receivables Convention follow this approach. A similar approach is taken by many national laws that follow these models (e.g., Nigeria, Kenya, Ethiopia).

Question for the Working Group:

- *Should the Model Law include a provision to override the effect of an anti-assignment clause?*
- *Should it do so broadly for any type of receivable that falls under its scope or limit it to a particular category, such as those arising from "trade" transactions?*
- *Should the Model Law preserve the right of the receivables debtor (for breach of a contract) against the assignor or provide that the prohibited assignment would not even constitute a default as between the assignor and the receivables debtor?*

J. Application to different categories of receivables financing products

69. The Factoring Model Law may apply to a range of different financing techniques.

70. **Receivables discounting:** This refers to a transaction in which individual or multiple receivables are sold at a discount to a financier.⁵² The funds made available to the seller are based on the outstanding value of the selected ("eligible") receivables. Typically, the financier will limit the transaction to certain clients of the seller whose receivables comply with a set criteria e.g., a minimum credit rating.⁵³ The funding is based on a security margin applied to the assigned receivables, as pre-agreed between the seller and the financier.⁵⁴

71. **Forfeiting:** This refers to a purchase of future payment obligations represented by negotiable instruments or payment obligations in negotiable form (without recourse) either at a

⁵² ICC, Standard Definitions for Techniques of Supply Chain Finance (2016), p. 28.

⁵³ *Id.*

⁵⁴ *Id.*

discount or in return for a financing charge.⁵⁵ Typically used in export financing, payment instruments include bills of exchange, promissory notes, and even obligations arising from letter of credit transactions because, whether by law or agreement, they are easily transferable to third parties by endorsement or assignment.⁵⁶

72. **Factoring:** This refers to a transaction in which receivables are sold at a discount to a finance provider (factor).⁵⁷ The factor typically becomes responsible for managing the debtor portfolio and collecting payments. In factoring, ownership of the receivable is transferred to the factor and the buyer settles the account directly with the factor. Accordingly, the receivables-debtor is usually notified of the transaction.⁵⁸ Factoring may be with or without recourse depending on aspects like the legal framework in the jurisdiction, market practice, credit insurance and so on.⁵⁹

73. **Factoring variations:** There are several variations of factoring, but the variations do not represent a separately defined technique. They include:

- (a) **Domestic factoring:** This is a factoring transaction where both the buyer and seller are located in the same country or jurisdiction. Domestic rules and regulations would apply due to the domestic nature of the transaction.⁶⁰
- (b) **International factoring:** Unlike domestic factoring, international factoring involves a buyer and seller located in different countries. Factoring may also involve international receivables where the receivables debtor is located in a different State. Conflicts of laws rules would determine which national rules would apply due to the international nature of the transaction.
- (c) **Recourse factoring:** In such transactions, the factor has recourse to the seller in the event of default by the receivables-debtor.⁶¹
- (d) **Non-recourse factoring:** Unlike recourse factoring, here the factor does not have recourse back to the seller in the event of buyer default. However, limited recourse may be available to ensure that the seller delivers against specific warranties that are a condition of payment.⁶²
- (e) **Non-notification factoring:** Here, the invoice bears no notice of the assignment and the receivables-debtor is unaware of the factoring arrangement between the factor and seller.⁶³
- (f) **Non-notifiable debts:** It may be possible to enter into factoring agreements that include certain debts in respect of which the client cannot give all the warranties and undertakings required by the factoring agreement. Usually, the factor will not make any prepayment in respect of those debts, so the seller is not required to notify the factor of their existence. These non-notifiable debts may be: i) debts arising from sales to the seller's suppliers or associates; ii) debts arising from contracts for delivery on sale or return; iii) debts arising from sales on terms more liberal than those approved by the factor; iv) debts owed by individuals with respect to goods supplied for personal use; v) debts arising from maintenance contracts providing that invoices be raised prior to the performance of the services; and vi) debts arising from exports or imports only to certain countries. While such debts are not included in the

⁵⁵ *Id.* at 34.

⁵⁶ *Id.*

⁵⁷ *Id.* at 39.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 43.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

funding arrangement between the seller and factor, they are still assigned under the factoring agreement, but the seller is not obliged to notify the factor of such debts and the factor is not obliged to make any prepayment thereon.

- (g) **Payables finance (reverse factoring):** This refers to a buyer-led program wherein sellers in a buyer's supply chain are provided the option of receiving the discounted value of receivables (owed by the buyer) prior to their due date at a financing cost aligned to the risk of the buyer.⁶⁴ The buyer selects invoices on its books for which it has an unconditional and irrevocable commitment to pay, and the seller is provided the option to sell the receivable to the financier for an early, discounted payment.⁶⁵ This arrangement differs from the above in terms of its mechanics, as it is the receivables-debtor that approaches a factor to purchase or finance receivables of its suppliers.
- (h) **Facultative v Whole Turnover Arrangements:** A factoring agreement may provide for the seller to offer eligible receivables to the factor for purchase who may decline their purchase. Such agreements are known as "facultative" or "block discounting" agreements. In those arrangements, the seller submits a batch of receivables to the factor for acceptance and purchase under an overarching master agreement, with each sale constituting a separate assignment. The alternative is a "whole turnover agreement," under which all eligible receivables vest in the factor from the moment they arise. Essentially, the factor commits to purchase all receivables offered under the agreement.

⁶⁴ *Id.* at 45.

⁶⁵ *Id.*

III. CONTENT AND STRUCTURE OF THE MODEL LAW

A. Formalities

74. The modern trend is to condition the creation of a security right only on execution of an agreement that provides for its creation and sufficiently identifies the receivables to be encumbered or transferred. The Secured Transactions Model Law does not impose any specific formal requirements for the creation of a security right in receivables. Furthermore, the agreement may be executed and signed by the parties electronically. The agreement may be individually negotiated or made available as a standardised form that parties wishing to participate in a trading platform must execute. In contrast, some countries require notification of the receivables debtor as a condition of creation or that the agreement must be executed in a specific form and be notarised.

Question for the Working Group:

- *Are there any reasons for the Model Law to require the satisfaction of some formalities as a condition of creation of a security right or transfer of receivables?*

B. Priority

75. The annexes to the Receivables Convention provide options for determining the priority between competing claims in a receivable. In implementing the Receivables Convention, States may choose between the three substantive priority systems contained in the annexes.⁶⁶ The three priority systems are based on: (i) registering a notice of the assignment; (ii) notification of the receivables-debtor; and (iii) time of assignment. States can choose one of these priority regimes by declaration or simply enact new priority rules or revise existing ones to implement the relevant priority approach.⁶⁷

76. The multiple approaches to priority were necessary due to the difficulty in finding consensus with respect to substantive rules for priority during the preparatory stage. The Receivables Convention set forth the alternative priority systems to ensure as much adoptability as possible.⁶⁸ If adopting States were to choose one of the three options, it would make it easier to determine an adopting State's priority rule.

77. With respect to registering a notice of the assignment, Section I, Article (1) of the annex provides that, between competing assignees of the same receivable, the priority of an assignee's right in the receivable is determined by the order in which data about the assignment is registered, regardless of the time of transfer. If no data is registered, then priority is determined by the order of conclusion of the respective assignment contracts. This is essentially a first-to-register rule, as the priority system effectively encourages registration of a notice of the assignment at the earliest possible time to give potential creditors and other third parties notice of the assignee's rights in the receivables. Registration does not create property rights, but provides an objective basis for allocating priorities between competing claims in an assigned receivable. In addition, under Section II, Article 2 the rights of an assignee in an assigned receivable have priority over the rights of an insolvency administrator, provided the receivable was assigned and data about the assignment was registered prior to the commencement of the insolvency proceeding. Section II, Article 3 provides generally for the core features of the registration system, which should be notice-based i.e., requiring

⁶⁶ Explanatory Note to the Receivables Convention, p. 42.

⁶⁷ *Id.*

⁶⁸ Committee on Foreign and Comparative Law of the Association of the Bar of the City of New York, *The Vienna Convention on the Assignment of Receivables in International Trade* (December 21, 2001), p. 9, <https://www.nybar.org/pdf/report/IntroV7.pdf>.

the provision of minimal information about the assignment sufficient to identify the parties and the assigned receivables.

78. Regarding the time of the contract of assignment priority approach, between competing assignees of the same receivable, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective assignment contracts.⁶⁹ Similarly, the rights of an assignee have priority over those of an insolvency administrator and judgment creditors, provided the receivable is assigned before the commencement of insolvency proceedings.⁷⁰ The time of conclusion may be proved by any means.⁷¹ However, this approach disadvantages potential creditors and third parties as they may determine whether a receivable has been assigned only at a higher cost.

79. The third priority system under the Receivables Convention is the order in which the receivables-debtor receives notifications of the assignments.⁷² The first assignee to notify the debtor will obtain priority provided that the assignee did not have knowledge of a prior assignment at the time the contract of assignment to that assignee is made. The assignee will also have priority over an insolvency administrator if the receivable was assigned and notification received by the debtor prior to the commencement of the insolvency proceeding.⁷³ To ensure the highest priority, this approach requires potential assignees to inquire with the debtor of the receivable whether the receivables have been previously assigned, which would be problematic for assignments in bulk. This approach also constrains the assignment of future receivables as receivables debtors may be unknown at the time the assignment agreement is entered into.

80. Under the Model Law, registration is the primary method of third-party effectiveness for security rights in receivables, including outright transfers.⁷⁴ Priority between security rights made effective against third parties by registration of a notice is determined by the order of registration.⁷⁵ This priority rule applies regardless of the order of creation of the security right.

81. Similar to the first option set out in the annex to the Receivables Convention, this accords with the first-to-register principle, which is designed to encourage the prompt registration of a notice of the security right to give potential creditors and other third parties notice of the secured creditor's rights in the receivables.⁷⁶ This approach also facilitates the extension of credit on the security of future assets, as it provides a single time for determining priority.⁷⁷ Additionally, it ensures predictability in secured transactions by enabling secured creditors to determine, prior to extending credit, their ranking as against other creditors in the assets of the grantor.⁷⁸

C. Choice of Law, Conflicts of law and International Transactions

82. While the Model Law will be drafted as a template for domestic legislation, its domestic implementation is expected to cover some cross-border aspects of receivables transactions. This raises a number of complex conflict of laws issues. The Working Group may wish to have an initial discussion regarding these issues, with an intention to work on them intersessionally.

⁶⁹ Section III, Article 6 of the Receivables Convention.

⁷⁰ Section III, Article 6 of the Receivables Convention.

⁷¹ Section III, Article 6 of the Receivables Convention.

⁷² Section IV, Article 9 of the Receivables Convention.

⁷³ Section IV, Article 10 of the Receivables Convention.

⁷⁴ Article 18(1) of the Model Law.

⁷⁵ Article 29(a) of the Model Law.

⁷⁶ Legislative Guide, p. 196.

⁷⁷ *Id.*

⁷⁸ *Id.*

D. Structure

83. Both the FCI Factoring Model Law and the AFREXIMBANK Model Law based their structures on the Receivables Convention, which is set out below.

Structure of the Receivables Convention

Chapter 1	Scope of Application
Chapter 2	General provisions
Chapter 3	Effects of assignments
Chapter 4	Rights, obligations and defences
Section 1	Assignor and Assignee
Section 2	Debtor
Section 3	Third parties
Chapter 5	Autonomous conflict-of-laws rules
Chapter 6	Final provisions
ANNEX	
Section 1	Priority rules based on registration
Section 2	Registration
Section 3	Priority rules based on the time of the contract of assignment
Section 4	Priority rules based on the time of notification of assignment

Question for the Working Group:

- *Should the UNIDROIT Factoring Model Law be structured in a similar way to the Receivables Convention?*

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