



**UNCITRAL Colloquium on
Secured Transactions:
Warehouse
Receipt Financing
Vienna
15 March 2017**

***Issues for
Practitioners
and
Law Reformers***



The Need for Appropriate Legislation

- Very few countries in Africa and Asia have comprehensive legislation dealing with warehouse receipts or documents of title.
- Local law governs the rights and obligations of warehouse operators, depositors, receipt holders and transferees.
- In the absence of legislation, banks are left with bi-lateral contractual agreements with warehouse operators and pledge agreements with borrowers, with limited rights of transferability and no protection against third party title claimants.
- In the absence of regulation of warehouses, banks are left to carry out due diligence on local warehouse operators.

Unnecessary Emphasis on Negotiable Warehouse Receipts

- **The Model Law and Common Law tradition is to limit protection against third party title claimants to documents of title, which are defined as negotiable documents.**
- **In reality warehouse operators are reluctant to issue negotiable warehouse receipts due in paper form due to security issues if the receipt is lost, stolen or destroyed. Depositors also are reluctant to receive negotiable receipts because of security issues.**
- **There is no policy reason why documents of title to goods should be limited to receipts in negotiable form. Until electronic warehouse receipts are widely available document of title status should be accorded to non-negotiable receipts issued to the holder and when transferred with notice to the warehouse operator.**

Status of Reform Initiatives

- **Efforts by multilateral institutions to encourage adoption of warehouse receipt legislation have been slow and uneven.**
- **Greater success has been achieved in more centrally-governed economies such as China, India, and CIS countries.**
- **In Africa, where most reform resources have been devoted, progress have been slower due to more granular economies and resistance from successful entrenched interests.**
- **A regional approach to law reform may be more successful because the impact of entrenched interests is more diluted. OHADA in thirteen African countries and the recent Inter-American Juridical Committee Report for Warehouse Receipts for Agricultural Products are examples of regional initiatives. (CJI/doc. 505/16 rev. 2 of September 27 2016)**

Template for Model Law

- **Legislative reform is easier if based on a template rather than ad hoc drafting efforts.**
- **One template that offers clear advantages is a stripped-down version of Article 7 of the UCC, which has a history of over 100 years beginning with the Uniform Warehouse Receipts Act (first adopted in 1906) and extensive interpretive jurisprudence.**
- **The panel members acknowledge the important work done in this field by UNCITRAL, the FAO, EBRD and World Bank Group, and recommend that a joint initiative be launched to develop a global template.**