

# KNOWLEDGE GUIDE ON CROP RECEIPTS FINANCE

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## LIST OF ACRONYMS AND ABBREVIATIONS

<b>CSA</b>	Climate-Smart Agriculture
<b>DAPL</b>	Principles on Digital Assets and Private Law (issued by UNIDROIT)
<b>GHG</b>	Greenhouse Gas
<b>FAO</b>	Food and Agriculture Organization (of the United Nations)
<b>IFC</b>	International Financial Corporation
<b>IFAD</b>	International Fund for Agricultural Development
<b>MLST</b>	Model Law on Secured Transactions (issued by UNCITRAL)
<b>MLWR</b>	Model Law on Warehouse Receipts (issued by UNIDROIT and UNCITRAL)
<b>PCG</b>	Partial Credit Guarantees
<b>PPSA</b>	Personal Property Security Act
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNIDROIT</b>	International Institute for the Unification of Private Law

## PREFACE AND ACKNOWLEDGEMENTS

The Knowledge Guide on Crop Receipts Finance was developed to support policymakers, regulators, and other stakeholders in designing and implementing legal and regulatory frameworks that enable the use of crop receipts—an innovative pre-harvest financing instrument—to expand access to agricultural credit, particularly for smallholder farmers and agribusinesses. Drawing on the experiences of countries such as Brazil, Ukraine and Serbia, this Guide outlines the key legal and institutional components necessary to deploy crop receipts effectively, aligning with international best practices in secured transactions.

This publication is the result of a close collaboration between the International Finance Corporation (IFC) and the International Law Institute (ILI). Special recognition is due to ILI’s team: Dr. Marek Dubovec, Director of Law Reform Programs and a leading global expert on access to credit; Thomas Johnson, Senior Legal Expert, whose deep legal expertise in agricultural finance informed much of the comparative analysis and legislative guidance in this Guide; and Sara Razavi Kelishadi, Research Associate, for her research support and contributions to the Guide.

The Guide also benefited from the expertise and field experience of the Ukraine Agriculture Capital Markets Development Project team, including Liliana Pozzo, Europe FIG Upstream and Advisory Manager, Kyrylo Mukhomedzyanov, Project Lead, and key legal experts Taras Burhan and Agil Abdullayev. Their insights into the practical challenges and legal innovations around

crop receipts in Ukraine have been critical in grounding this Guide in real-world structuring and implementation.

We gratefully acknowledge the collaboration of government representatives, legal practitioners and financial sector actors from Brazil, Ukraine, Serbia and beyond, who generously shared their time, lessons and perspectives.

We are also grateful for the support of our development partner, State Secretariat for Economic Affairs (SECO), whose commitment to strengthening agricultural and financial systems in emerging markets has enabled this work.

We recognize the valuable contributions of UNIDROIT and UNCITRAL, whose work on international legal standards, most notably the 2024 UNCITRAL/UNIDROIT Model Law on Warehouse Receipts, provided a reference point and inspiration for pursuing harmonization in the area of crop receipts.

This Guide seeks to inform both national reform efforts and the future development of a model law on crop receipts. We hope it will serve as a practical resource for governments, legislators, financial institutions and development practitioners working to expand agricultural finance in a sustainable, inclusive and secure manner.

Produced in cooperation with ILI and the Ukraine Agriculture Capital Markets Development Project.

## EXECUTIVE SUMMARY

A crop receipt is a **pre-harvest agricultural finance instrument** first introduced in Brazil in the 1990s. The successful deployment of crop receipts in Brazil has inspired other States, most notably Ukraine, to enact (or consider enacting) their own legislation. Crop receipts legislation facilitates the extension of agricultural production loans (and other finance products used primarily to fund the production of agricultural commodities), particularly for smallholder farmers that lack conventional forms of collateral such as real estate. In recent years, legislation has enabled the conversion of crop receipts into financial instruments, especially asset-backed securities, which can be distributed in the secondary market. The use of crop receipts as a financial instrument has attracted significant interest from investors, including “impact investors” seeking to address food security and environmental sustainability issues.

Successful deployment of crop receipts largely depends upon the existence of a supportive legal and regulatory framework. Such a framework is typically established through enactment of dedicated legislation as well as amendments to other laws, such as laws on secured transactions and regulation of the securities market. However, there are currently no harmonized international legal standards on crop receipts to guide States considering adoption of their own laws, as exist for other agricultural finance instruments such as warehouse receipts. Moreover, while existing experience implementing crop receipts legislation is instructive, replicating the approaches

adopted in Brazil and Ukraine may create issues in States with contrasting legal and regulatory systems in place. Despite many similarities, crop receipts legislation in Brazil and Ukraine also differs in several important respects.

When drafting crop receipts legislation, States must be cautious not to adopt approaches that are inconsistent with the prevailing legal and regulatory framework. They should adopt approaches that broadly align with international legal standards, particularly in the areas of secured transactions and the transfer of digital assets/electronic transferable records. While the legal and regulatory framework underlying crop receipts in Brazil and Ukraine is relatively advanced, other States might have less developed frameworks in place, which presents new challenges and may require the adoption of innovative solutions. This Knowledge Guide is designed to assist all States draft and implement crop receipts legislation in their own jurisdictions, based upon the experience of Brazil, Ukraine and other States, as well as relevant international legal standards issued by international organizations such as the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT).

This Knowledge Guide is a step toward a harmonized legal standard on crop receipts, which could (in the future) be developed in the form of a model law. A similar approach has already been employed in the case of warehouse

receipts, which are important post-harvest agricultural finance instruments. For example, international organizations, including World Bank and the UN Food and Agriculture Organization (FAO) have issued numerous legal and operational guides on warehouse receipts that have ultimately served as a basis for adoption of a harmonized international legal standard. The Model Law on Warehouse Receipts (MLWR) was jointly adopted by UNCITRAL and UNIDROIT in 2024.

While the fundamental aspects of crop receipts may be anchored in existing legislation, particularly property, negotiable instruments and secured transactions laws, regulatory changes, including changes in the capital markets regulation, are necessary. The path for States that have enacted modern secured transactions laws may be easier as those fundamental aspects would already exist. Careful consideration should be given to the establishment of registry systems and enforcement remedies, which are the cornerstones of crop receipts.



## INTRODUCTION

This Knowledge Guide provides a roadmap to deploy crop receipts to increase the flow of finance to agricultural production. Crop receipts facilitate pre-harvest credit in the form of production loans. The overall objective is to identify elements necessary to design legislation specific to crop receipts that may also serve as guidance for the future development of model legislation by an international organization.

Financing facilities supported by crop receipts have already been implemented in Brazil, Serbia and Ukraine, and many other States are considering implementing such regimes. Crop receipts legislation in these States provides for critical protections to creditors, including the creation and third-party effectiveness (perfection) of security rights in the future harvest. While this system of financing has operated for decades in Brazil, it is a new instrument for many emerging economies seeking to increase finance for agricultural markets, particularly for borrowers that lack eligible collateral. Although new as a financial instrument, many States already enable loan facilities specifically designed to provide finance for the growing of crops. Crop receipts legislation intersects with the secured transactions and other laws, requiring a particular approach to fit organically within the broader domestic legal and regulatory framework. Many States have recently reformed their secured transactions laws, which may require an approach to crop receipts that differs in many aspects from the Brazil model, given its lack of alignment with the international secured transactions standards. A significant area of divergence relates to the registry for crop receipts and

the third-party effectiveness of security rights.

Crop receipts can be deployed to further food security and environmental sustainability objectives. They enable agricultural enterprises to access the necessary funds, inputs and equipment to increase production volumes and quality, thereby feeding a growing population. They can also help smallholder producers make the necessary investments to transition from subsistence-oriented to market-oriented production, which has a positive impact on their livelihoods. Moreover, “green” crop receipts can be issued to finance the adoption of sustainable and climate-smart practices and technologies.

One of the most compelling features of crop receipts is their potential to attract investment funds from the secondary market. Unlike an ordinary agricultural loan, a crop receipt is a financial instrument. In Brazil, several financial instruments, such as bonds backed by crop receipts have been introduced, attracting significant interest from investors. A 2019 report published by IFC and FAO covers the potential of crop receipts as an investment instrument in Africa, based on the experience of Brazil. However, the report concluded that because capital market infrastructure is still underdeveloped in many African States, crop receipts would be issued directly to agricultural input suppliers and lenders, rather than transformed into financial instruments and sold on the secondary market to investors. Advances in digitalization may further accelerate the financialization of crop receipts in the retail secondary market.

The primary benefit that crop receipts offer agricultural enterprises is expanded access to pre-harvest finance, as well as other goods and services required to produce an agricultural commodity. Other value chain participants (e.g., a large trading company) and financial institutions are more likely to extend finance, and at lower rates, to producers whose obligations are backed by crop receipts. The financial instrument nature of the crop receipt facilitates its trading. The added value of crop receipts is larger for subsistence producers and small-scale commercial producers because they have fewer options to access credit and are more collateral-constrained. These categories of producers were the target for crop receipts reforms in Brazil, Ukraine and elsewhere.<sup>1</sup>

Crop receipts offer several benefits to purchasers of farm products (e.g., a processor or retailer) and to financial institutions and investors by providing them with a bundle of rights that protect their interests in the agricultural commodity being financed. These rights reduce the risks inherent in financing agricultural production. Crop receipts establish a clear and standardized obligation for the producer to deliver agricultural commodities or make a payment, secured by the future crop. Creditors benefit from a streamlined and expedited process for enforcing their rights. Crop receipts can serve as an alternative

investment for financial institutions, diversifying their portfolios beyond traditional agricultural lending.<sup>2</sup> Crop receipts can be transferred and traded, increasing liquidity for the initial buyer or financier. Crop receipts may also be packaged into various financial instruments that trade in capital markets.

Crop receipts assist policymakers and regulators in achieving development goals by fostering more organized and efficient agricultural markets, promoting formalization of micro and small farmers, as well as aiding in the monitoring of production and trade. Crop receipts provide a standardized method for documenting agricultural production, making it easier to track the flow of goods and assess their quality. The Central Bank of Brazil, for example, collects data on all issued crop receipts, including the values for each year.<sup>3</sup> Crop receipts can also help financial institutions comply with lending quotas to the agricultural sector.

This Knowledge Guide is divided into five Sections. Section I discusses the economic rationale and challenges associated with agricultural finance in general and pre-harvest financing in particular. Food security and environmental sustainability are two big issues that crop receipts have been deployed to address. Importantly, crop receipts constitute a “pre-harvest” or production finance instrument that helps producers obtain credit prior to planting

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<sup>1</sup> IFC Africa. 2019. Crops receipts—A New Financing Instrument For Africa. <https://www.ifc.org/en/insights-reports/2019/crops-receipts>

<sup>2</sup> Kovačević, V. et al., 2022. Crop Receipts as Alternative Financial Instruments. *Economics of Agriculture* (3): 849-861. <https://scindeks->

[clanci.ceon.rs/data/pdf/0352-3462/2022/0352-34622203849K.pdf](http://clanci.ceon.rs/data/pdf/0352-3462/2022/0352-34622203849K.pdf)

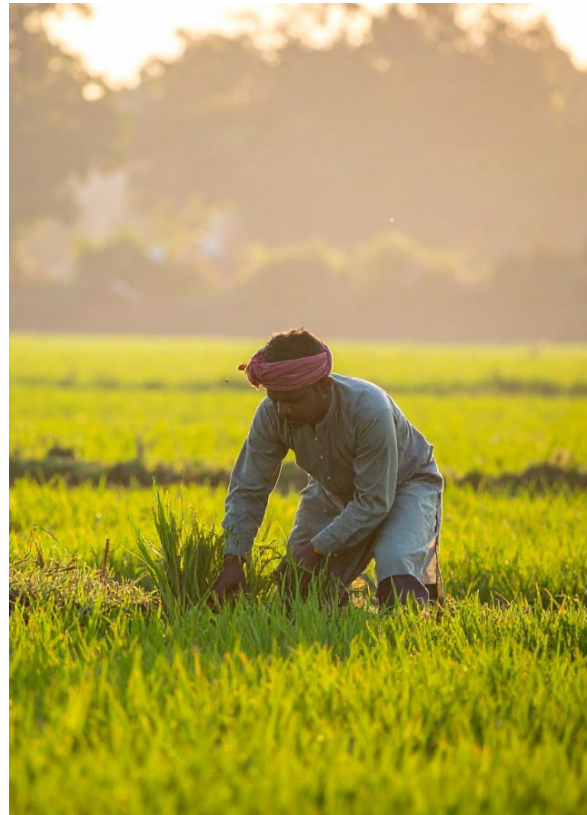
<sup>3</sup>

[https://www.bcb.gov.br/content/publicacoes/bole\\_timderop/Boletim%20Derop%20-%20Julho%202023.pdf](https://www.bcb.gov.br/content/publicacoes/bole_timderop/Boletim%20Derop%20-%20Julho%202023.pdf) (in Portuguese).

when collateral constraints are most acute. Due to the risks inherent in financing the production of agricultural commodities, lenders are reluctant to advance funds or provide inputs to producers. When they do, the interest rates and fees are often exorbitantly high, thereby having an exclusionary effect. Crop receipts help mitigate these risks by providing recourse against the value of the harvest, as well as assets that a producer already owns, such as livestock.

Section II provides a general overview of crop receipts including the various financing techniques that may be used under a general legal framework. These include (1) prepaid forward contracts, (2) barter transactions, (3) contract farming and (4) production financing. Crop receipts are designed to standardize these techniques while providing additional protections to creditors. Section II also summarizes the general definitions provided under existing legislation on crop receipts, the types of commodities covered by crop receipts and the individual types of crop receipts, particularly physical and financial crop receipts.

Section III sets out the key features of crop receipts legislation enacted in Brazil, Serbia and Ukraine. Crop receipts are typically governed by a standalone law. While these rules are specific to crop receipts, they interact with critical aspects governed by other legislation. Section III discusses such legislation, analyzing its effect on crop receipts. Such aspects governed by other legislation include (1) property rights in immovable and movable property, (2) security rights in agricultural commodities, (3) the negotiable nature of crop receipts, (4) rights of crop receipts



holders to underlying assets, similar to negotiable documents/documents of title, (5) issuance and circulation of crop receipts as digital assets/electronic transferable records and (6) the distribution of financial instruments backed by crop receipts in capital markets. Finally, Section III examines whether States can leverage existing laws to deploy crop receipts, or whether they should be recognized as a new asset class under bespoke legislation.

Section IV outlines the structure of a law on crop receipts, which may be organized as follows: (1) definitions and scope; (2) the requirements for issuance of crop receipts, including in electronic form; (3) registration of crop receipts; (4) the transfer of crop receipts to subsequent holders/transferees; (5) enforcement; and (6) final provisions. Section IV provides a

basis for future work on a model law on crop receipts. Section V discusses the role of the public sector and government in supporting the deployment of crop receipts, including the significance of law reform, public awareness and capacity building; and of leveraging existing financial and market infrastructure. Section V thus articulates the specific steps States must take to successfully deploy crop receipts in practice.



# I. ECONOMIC RATIONALE AND CHALLENGE

## A. IMPORTANCE OF AGRICULTURE

### i. Food Security

The UN Sustainable Development Goals aim to end world hunger, food insecurity and malnutrition by 2030; however, they are no longer on track due to regressive trends in recent years. Healthy diets are becoming increasingly unaffordable due to factors outside agrifood systems,<sup>4</sup> such as climate change, political conflict and economic decline, in addition to internal factors, including low productivity. Such factors are identified by the FAO as the leading contributors to food insecurity and malnutrition.

Since 2020, the prevalence of food insecurity has remained relatively stable, following a sharp increase in levels from 2019 to 2020. Nevertheless, due to the rise in global population, these levels have still constituted an increase of 65 million in the numbers of moderate or severe food-insecure people from 2020 to 2023.<sup>5</sup> At a disaggregated level, undernourishment in Latin America and the Caribbean is projected to drop to below 5 percent of their populations by 2030. In Asia, the share of undernourished people is projected to fall by nearly half,

reaching 4.8 percent by 2030—the greatest progress among all regions. On the other hand, Africa is projected to see an increase of 10 million in the number of undernourished people over the same time frame, bringing the share of its population facing undernourishment to 18 percent.

Food security can fluctuate depending on the season.<sup>6</sup> Food stocks are often lower and costs higher during the pre-harvesting season; the post-harvesting season tends to bring an influx of food, lowering the cost. Extreme weather can affect productivity, while other seasonal factors can influence the income availability of consumers, such as seasonal expenses or employment. Beyond seasonal aspects, according to the UN World Food Programme, high import costs and transportation networks are other examples of issues that affect food availability.

### ii. Sustainably Increasing Production of Agricultural Commodities/Food Products to Feed the Growing Population

With the global population predicted to increase to 10 billion by 2050, food demand is projected to rise by between 35 and 65 percent.<sup>7</sup> Nevertheless, achieving net-zero emissions by the agrifood system

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<sup>4</sup> “Agrifood system” refers to the entire chain bringing food from farm to consumer, and includes production, processing, distribution and markets, along with the associated economic, social and environmental effects.

<sup>5</sup> FAO. 2025. The State of Food Security and Nutrition in the World 2025. <https://www.fao.org/publications/fao-flagship-publications/the-state-of-food-security-and-nutrition-in-the-world/en>

<sup>6</sup> World Food Programme. 2025. Food Security – what it means and why it matters. <https://www.wfp.org/stories/food-security-what-it-means-and-why-it-matters>

<sup>7</sup> FAO. 2025. The State of Food Security and Nutrition in the World 2025. <https://www.fao.org/publications/fao-flagship-publications/the-state-of-food-security-and-nutrition-in-the-world/en>

is possible with “country-specific and global enabling efforts,”<sup>8</sup> while taking advantage of current technological advancements, private-sector involvement and higher consumer awareness. Agrifood efficiency improvements, marketing sustainable products, promoting low-emission food options and adopting climate-smart agriculture (CSA) are all examples of ways the agrifood system can become more sustainable.

Almost 67 percent of systems and technologies classified as CSA relate to cropping systems. Furthermore, in addition to lowering greenhouse gas (GHG) emissions, CSA can achieve economic benefits and enhance climate resilience, making it an attractive tool for rural development, particularly in the context of cropping systems. Recent studies have found that a potential 16 percent increase in crop production could be achieved through the reallocation of approximately 11 percent of the global funds previously allocated for agriculture over a two-year period.<sup>9</sup> This reallocation would be directed toward technology that lowers emissions and enhances production.

To meet the increasing demand of a growing population sustainably, the World Resources Institute categorizes the global gaps to be filled into three categories: the food gap, the land gap, and the GHG mitigation gap. The food gap refers to the

amount of food required to feed the growing population. In comparison with 2010 production levels, the World Resources Institute predicts that a 56 percent increase in crop calorie production is necessary to fill this gap. To address all three categories, five paths are set out: (1) manage food demand, (2) increase food production without expanding agricultural land, (3) restore and protect natural ecosystems, (4) expand the supply of fish and (5) reduce agricultural GHG emissions.<sup>10</sup>

Managing food demand requires, for example, shifting the demand for meat to plant-based foods. Boosting food production without the expansion of agricultural land includes continuing to improve crop breeding by substantially increasing the budget for such programs. Mapping the genetic coding of plants, allowing biologists to “turn genes on and off at will” and “to test whether...plants have the desired DNA traits without fully growing them, and purify crop strains more rapidly” is now more accessible than ever, providing the potential for more yield gains.<sup>11</sup>

Other steps for producers to take involve improving their soil and water management practices, since 25 percent of global cropland may be impacted by degraded soils. Degraded land can be restored via agroforestry or regenerative

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<sup>8</sup> World Bank. 2024. Recipe for a Livable Planet: Achieving Net Zero Emissions in the Agrifood System. <https://www.worldbank.org/en/topic/agriculture/publication/recipe-for-livable-planet>

<sup>9</sup> FAO. 2024. The State of Food Security and Nutrition in the World 2024, Chapter 2: Food Security and Nutrition Around the World. <https://openknowledge.fao.org/server/api/core/bi>

<tstreams/39dbc6d1-58eb-4aac-bd8a-47a8a2c07c67/content/state-food-security-and-nutrition-2024/ending-hunger-food-security.html#gsc.tab=0>.

<sup>10</sup> WRI. 2018. How to Sustainably Feed 10 Billion People by 2050, in 21 Charts.

<https://www.wri.org/insights/how-sustainably-feed-10-billion-people-2050-21-charts>.

<sup>11</sup> Id.

agriculture practices, for example, which in turn can improve soil health and also increase crop yields over time. Furthermore, producers can increase output without land expansion by maximizing the use of existing croplands, such as reducing fallow land and increasing double cropping. Climate change adaptation measures are also vital. Implementing water conservation and smart irrigation systems, as well as breeding crops for higher heat tolerance, are examples of such measures.

### iii. Climate Impact

Nearly one-third of global GHG emissions are attributed to agrifood.<sup>12</sup> “Farm-gate activities, land use change, and pre- and post-production activities”<sup>13</sup> are three general categories into which GHG emissions from agrifood can be divided. Of these, 45.4 percent are attributed to the first category, which represents the emissions directly from farms and food production. Land use change and pre- and post-production activities account for 20.8 and 33.8 percent, respectively. In addition to carbon dioxide (CO<sub>2</sub>), the emissions from agrifood include powerful methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O) GHGs, making the emissions even more detrimental due to

their more aggressive heating effect, for example. Over the past three decades, agrifood emissions have increased by 14 percent and some studies predict they may increase by up to 80 percent by 2050. Deforestation, biodiversity loss and freshwater consumption are three additional problematic areas in which the industry is a leading negative contributor.<sup>14</sup> The Paris Agreement temperature target of 1.5°C is therefore no longer feasible without reductions in agrifood emissions.

The climate impact on agriculture is also substantial. In 2021, climate shocks resulted in USD (United States dollars) 19.3 billion in agricultural losses, based on data from 22 countries. These events are persistent and increasing in intensity, and constitute temperature rises and changes in precipitation (leading to extreme weather, droughts and floods, for example); globally, an estimated 13.2 percent of food was lost post-harvesting. By 2050, global crop yields are predicted to fall by 5 percent without climate change adaptation measures.<sup>15</sup> Less than 5 percent of the total global climate finance tracked in 2019–2020 was allocated to agrifood.<sup>16</sup> More than USD 1 trillion is needed to bring the industry back on track to achieve the 1.5°C goal.

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<sup>12</sup> FAO. 2024. The State of Food Security and Nutrition in the World 2024, Chapter 2: Food Security and Nutrition Around the World. <https://openknowledge.fao.org/server/api/core/bitstreams/39dbc6d1-58eb-4aac-bd8a-47a8a2c07c67/content/state-food-security-and-nutrition-2024/ending-hunger-food-security.html#gsc.tab=0>.

<sup>13</sup> World Bank. 2024. Recipe for a Livable Planet: Achieving Net Zero Emissions in the Agrifood System. <https://www.worldbank.org/en/topic/agriculture/publication/recipe-for-livable-planet>

<sup>14</sup> CPI & FAO. 2025. The Triple Gap in Finance for Agrifood Systems.

<https://www.climatepolicyinitiative.org/wp-content/uploads/2024/11/The-Triple-Gap-in-Climate-Finance-Needs-for-Agrifood-Systems.pdf>.

<sup>15</sup> WRI. 2018. How to Sustainably Feed 10 Billion People by 2050, in 21 Charts.

<https://www.wri.org/insights/how-sustainably-feed-10-billion-people-2050-21-charts>.

<sup>16</sup> CPI & FAO. 2025. The Triple Gap in Finance for Agrifood Systems.

<https://www.climatepolicyinitiative.org/wp-content/uploads/2024/11/The-Triple-Gap-in-Climate-Finance-Needs-for-Agrifood-Systems.pdf>

## **B. IMPORTANCE OF FINANCING FOR THE AGRICULTURAL SECTOR**

### **i. Agricultural Finance Gap, Particularly at the Pre-Harvest Stage**

Access to affordable and timely finance is critical for the transformation and resilience of the agricultural sector. It enables farmers and agribusinesses to invest in inputs (e.g., crop protection products, seeds, fertilizers, fuel), technology (e.g., CSA equipment and machinery, remote sensing, the Internet of Things), storage (warehouses, cold storage, freezers) and value addition (i.e., processing), thereby increasing productivity, improving food security, reducing food loss and driving rural economic development. However, agriculture in many countries remains underfinanced due to sector-specific risks, lack of institutional knowledge, limited use of formal collateral and insufficient financial infrastructure.

To quantify the shortfall in available financing, the agricultural finance gap can be estimated by comparing the sector's total financing needs against the actual volume of credit extended by the financial sector. The financing need is often proxied by the value added in the agriculture, forestry and fishing sectors, adjusted by a credit demand factor that reflects the typical capital intensity and financing requirements in the country context.

This approach provides an indicative yet meaningful estimate of the financing shortfall, helping identify the scale of investment required to close the gap. In countries where agriculture contributes

significantly to gross domestic product but receives a disproportionately small share of credit, the gap can be substantial, highlighting the need for policy and institutional reforms such as crop and warehouse receipts laws, modern secured transaction laws, inclusive digital finance platforms and risk mitigation instruments.

Due to a lack of transparency in financing flows and poor data in agricultural processes, accurate estimates of this gap on a global scale remain a challenge. However, the consensus remains that more agricultural investment and inclusion are crucial in yielding higher productivity: having access to credit, savings, payments and insurance are core enablers of smooth, sustainable agricultural operations. Access to formal financing is particularly important because producers are, for example, vulnerable to climatic shocks that affect entire communities. At the same time, market interest rates of loans and fixed repayment schedules are examples of characteristics of traditional formal financing that can be unaffordable and incompatible with the needs of impoverished producers in a seasonal industry. Consequently, tailored services, government assistance and facilitation through incentives to make microfinance institutions, mobile financial services and other alternative institutions more accessible (due to, for example, their lower transaction costs and issues pertaining to physical locations) are paramount. This provides more options for producers who have varying needs and limitations.

## ii. Agricultural Finance Gap for Smallholder Producers

Around 30 percent of food globally, and 60–80 percent in emerging economies,<sup>17</sup> is produced by smallholders.<sup>18</sup> Yet, in comparison with large-scale producers, their labor productivity, annual income and land ownership/secure tenure rights are far behind. This is a result of a combination of factors, many of which can be traced back to a lack of access to finance, leaving smallholder producers at a disadvantage. Producers are unable to improve their crop yields and income without, for example, the financing necessary to acquire inputs such as fertilizer and seeds. Insufficient storage also contributes to their inability to reap the fruits of their labor fully, being forced to sell immediately post-harvest.<sup>19</sup>

According to one report, there is an estimated USD 170 billion finance gap in Africa, Latin America and Asia. The reluctance of financial institutions to lend to smallholders (either due to their perceived risk or the fact that they do not provide the tailored financial services needed) and the lack of physical locations near smallholders are two contributors to this gap. Another component is that smallholder producers mainly lack the means, such as collateral, and by and large remain excluded from formal financing.<sup>20</sup>

## iii. Regulatory Aspects, Including Mandatory Lending Quotas to the Agricultural Sector, Prudential Regulations, and Sustainability Requirements

Although this Knowledge Guide primarily concerns the legal framework governing crop receipts, States should also consider regulatory measures taken to expand access to credit in the agricultural sector, such as mandatory lending quotas to the agricultural sector, prudential regulations and sustainability requirements. Often, when deployed, such measures do not produce the desired effect, meaning they must be adequately calibrated. It is important that regulatory regimes and measures relevant to agricultural finance are properly coordinated with applicable legal frameworks. Failure to do so could result in ambiguities and inconsistencies that hinder the uptake of credit products, including crop receipts finance.

Under directed-lending programs, for example, a banking and/or monetary authority will typically require lenders to extend a certain amount of finance to the agricultural sector. Such requirements are ordinarily provided for in banking regulations, and they are generally referred to as “priority sector lending quotas.” Lenders that do not meet their quotas may be subject to sanctions. Directed lending was an important development tool in the 1960s and 1970s, particularly in Africa,

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<sup>17</sup> IFAD. Feeding the World Through Sustainable Agriculture.

<https://www.ifad.org/en/web/guest/crops>

<sup>18</sup> FAO. 2024. The State of Food Security and Nutrition in the World 2024, Chapter 2: Food Security and Nutrition Around the World.

<https://openknowledge.fao.org/server/api/core/bitstreams/39dbc6d1-58eb-4aac-bd8a->

<47a8a2c07c67/content/state-food-security-and-nutrition-2024/ending-hunger-food-security.html#gsc.tab=0>.

<sup>19</sup> CSIS. 2022. Access to Finance for Smallholder Producers. <https://www.csis.org/analysis/access-finance-smallholder-farmers>

<sup>20</sup> Id.

Asia and Latin America, and it was often implemented in the agricultural sector to address food insecurity. Most loans under directed-lending programs are extended by specialized lenders, such as agricultural and development banks, as well as government financial institutions. Some directed-lending programs were phased out in the 1980s and 1990s as part of market-oriented banking and financial reforms. However, lending quotas persist in many emerging markets, including Brazil and the Philippines.

States have also deployed other market-enabling interventions to stimulate agricultural lending without distorting credit markets. Instruments like partial credit guarantees (PCGs) can reduce lenders' risk exposure by covering a portion of potential losses, thereby encouraging them to extend credit to underbanked farmers who lack traditional collateral. Matching grants and blended-finance schemes are also used to incentivize investment in productivity-enhancing technologies, particularly among smallholders. These instruments are often funded or co-financed by development partners (development finance institutions) and can target underserved segments such as women farmers or climate-smart agricultural practices. When well-designed, such interventions can catalyze private-sector lending, lower borrowing costs, and improve creditworthiness over time. It is essential that these tools are integrated with broader legal and regulatory frameworks—such as crop receipt laws—to ensure complementarity and avoid overlaps or conflicting incentives.



## II. WHAT ARE CROP RECEIPTS

Crop receipts are a relatively new pre-harvest credit instrument issued by agricultural enterprises to obtain funds and/or inputs to produce agricultural commodities. Legislation typically provides for legal definitions of crop receipts, which share certain common features, although no uniform definition exists. The reference to the term “crop” should not be interpreted to limit their scope to plant-based agricultural commodities, as they may also be issued to finance the raising of livestock (animal husbandry) or primary processed products. For this reason, legislation in Ukraine refers to “agrarian receipts” [*agrarni rozpysky*] or “agrarian notes” [*agrarni noty*]*—*an enhanced form of agrarian receipts which are digital tradable securities introduced in Ukraine in 2025. Meanwhile, in Brazil, legislation refers to “receipts of rural products” [*cedulas de produto rural*]. This Guide refers to crop receipts as this is the term commonly used in English, including in guidance documents issued by the European Bank for Reconstruction and Development, FAO, IFC, the International Monetary Fund and World Bank.

Subsection A briefly summarizes four commonly used techniques to finance agricultural production. Subsection B provides a general concept and definition of crop receipts. Subsection C discusses individual types of crop receipts, particularly physical crop receipts and financial crop receipts, and links each type to the four techniques to finance

agricultural production discussed in Subsection A.

### A. TECHNIQUES TO FINANCE AGRICULTURAL PRODUCTION

Agricultural production may be financed through various techniques, including (1) prepaid forward contracts, (2) barter/exchange, (3) contract farming and (4) production financing. The first three may be categorized as “agricultural value-chain financing” techniques because they are typically used by direct participants in a value chain such as a large trading company that extends finance to small-scale producers to reinforce its supply line. Production loans, by contrast, are typically extended by a financial institution to a producer. All four techniques may be important “commercial entry points” for introducing crop receipts, including on a pilot basis.<sup>21</sup>

#### i. Forward Contracts

Forward contracts can be used to fix the prices of crops before harvest, as well as to finance crop production. Forward contracts are sale agreements to buy/sell commodities at a set price, and at a specific time in the future. Forward contracts are important to producers because they fix a price in advance of harvest, decreasing their exposure to price fluctuations and enabling them to adjust their use of inputs. A “fixed-price” forward contract is one of the most prevalent types of forward contracts deployed in

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<sup>21</sup> IFC. 2019. Crop Receipts: A New Financing Instrument for Africa.

<https://www.ifc.org/content/dam/ifc/doc/mgrt/crop-receipts-finalweb-1-17-19.pdf>.

agricultural value chains.<sup>22</sup> In a fixed-price forward contract, the producer agrees to deliver a certain quality and quantity of agricultural commodities at a specified time in the future. In most cases, the seller (producer) is paid on delivery.<sup>23</sup>

Forward contracts can also be used to obtain pre-harvest finance. In this case, the seller is paid in advance of delivery and applies the proceeds to input costs associated with the production of the agricultural commodity. Such contracts have been referred to as “prepaid” forward contracts. Prepaid forward contracts present several risks, including that the producer forward sells the future agricultural commodity to another buyer. Prepaid forward contracts are typically unsecured, meaning that it could be more challenging for the buyer to take delivery of the harvest if the seller fails to perform its obligation.

Forward contracts may also be used to access receivables finance. An undertaking by the buyer to purchase a commodity at a specific point in time is a valuable asset for the producer, constituting a future receivable under the 2023 UNIDROIT Model Law on Factoring. However, this type of financing is unlikely to occur, given the numerous risks associated with the production and sale of commodities that inevitably affect the value of the receivable.

## ii. Barter (Exchange)

Barter is a pre-harvest financing technique in which the producer receives a specific input package in-kind in exchange for a commitment to deliver a specified volume

of agricultural commodities to the buyer (input supplier).<sup>24</sup> Barter refers to the practice of exchanging products, services or resources for other goods or services without using money. This means producers might trade crops for tools/equipment, labor or other farm inputs instead of paying with cash.

## iii. Contract Farming

Contract farming shares several features with prepaid forward contracts. Contract farming entails an agreement between a producer and a buyer (typically a processing/marketing company) for the production and supply of agricultural commodities pursuant to a forward contract. The agricultural production contract underpinning contract farming typically involves a producer and a buyer (or contractor) engaged in a bilateral relationship. The main feature that distinguishes contract farming from a prepaid forward contract is that the buyer not only provides specifications regarding the final product but also typically controls the production process. UNIDROIT, FAO and The International Fund for Agricultural Development (IFAD) published the Legal Guide on Contract Farming in 2015, which provides guidance on the various legal aspects of “agricultural production contracts,” including form and content of the contract, the rights and obligations of the parties, and enforcement. The Legal Guide on Contract Farming informs many aspects of prepaid forward contracts.

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<sup>22</sup> Id.

<sup>23</sup> Supra at IFC. 2019

<sup>24</sup> Supra at IFC. 2019

#### iv. Production Loans

Like prepaid forward contracts and contract farming, secured agricultural production loans finance the production of agricultural commodities. However, unlike those two instruments, agricultural production loans entail the extension of finance (as opposed to sales) and are typically provided by agricultural lenders (as opposed to buyers/processors). Production loans are ordinarily “self-liquidating,” which means they are repaid from the proceeds of the sale of the harvest. They are extended on a short-term basis, usually lasting a single production cycle. The maturity date is set to coincide with the date that the commodity is expected to be sold. Because these loans are repaid from the proceeds of the sale, a lender takes a security right in the (future) commodity being financed as well as the proceeds, typically in the form of cash or a receivable.

### B. CROP RECEIPTS

This Subsection provides general definitions of crop receipts. Crop receipts legislation typically provides for a general definition of crop receipts as well as separate definitions for individual types, namely physical crop receipts and financial crop receipts, which will be discussed in Subsection C. The Subsection concludes by discussing the categories of agricultural commodities that may be covered by crop receipts, which are typically enumerated in crop receipts legislation.

#### i. Concept and Definition

Crop receipts may be of a physical or financial nature, depending on how the producer’s obligation is settled. They share

several features, including (1) they are used to finance the production of agricultural commodities; (2) are issued in a legally prescribed form; and (3) constitute a promise/obligation to either make a future delivery of agricultural commodities or pay a sum of money. The distinction between physical and financial crop receipts reflects the features of forward contracts and contract farming on the one hand, and agricultural production loans on the other hand. Accordingly, an obligation of the agricultural producer is either to deliver a commodity or repay the loan. The former is governed by contract law, while the latter may be a negotiable instrument such as a promissory note that evidences the obligation owed by the producer to a financial institution. The definitions of the two types of crop receipts in legislation should reflect these distinct types of obligations, which is also critical in



classifying crop receipts as financial instruments.

The Brazilian Law on Crop Receipts (“the Brazilian Law”)<sup>25</sup> defines a crop receipt generally as having “a liquid and certain title [*título líquido e certo*], settled by the quantity and quality of the commodity or by the value provided for therein, in the case of financial settlement.” The Brazilian Law refers to crop receipts as constituting a promise to deliver agricultural commodities or to pay a sum of money. It states that a crop receipt may or may not be supported by a guarantee [*garantia*], such as the pledge of future agricultural commodities. In addition to a liquid and certain title, the Brazilian Law classifies crop receipts registered with a securities intermediary (licensed by the Central Bank of Brazil) as financial assets [*ativo financeiro*]. The Law provides that all crop receipts, regardless of type or value, must be registered by a securities intermediary licensed by the Central Bank of Brazil “in order not to lose validity and effectiveness.” However, the registration requirement may be waived by the National Monetary Council of Brazil. In addition, the Brazilian Law defers to the law governing promissory notes and bills of exchange for purposes of transfer, which is carried out by way of an endorsement [*endosso*]. The mix of definitions and

classifications of crop receipts in the Brazilian Law is overly complex (for further discussion on legal classification of crop receipts see Section IV-A).

The Ukrainian Law on Crop Receipts<sup>26</sup> defines crop receipts generally as a “document of title [*tovarozporiadchyi dokument*], representing the unconditional obligation of the debtor, secured by a pledge, to deliver agricultural commodities or to pay a sum of money according to the terms specified therein.” The Ukrainian Law on Agrarian Notes,<sup>27</sup> in contrast, defines an agrarian note (which in essence is an electronic version of a crop receipt) as a “non-issuable security [*neemisiyniy tsinniy papir*] that records the unconditional obligation of the debtor, secured by a pledge, to deliver agricultural commodities or pay a sum of money according to the terms specified therein.” The legal framework for non-issuable securities in Ukraine is different than the legal framework for “issuable” securities, which applies, for example, to stocks and bonds; this imposes more stringent requirements on issuers (for a discussion of approaches to classification of crop receipts, see Section III).<sup>28</sup>

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<sup>25</sup> Official name: Lei da Cédula de Produto Rural (CPR) — “Rural Product Note Law,” Law No. 8.929/1994, as amended.

<sup>26</sup> Official name: Закон України «Про аграрні розписки» — “Law of Ukraine on Agrarian Receipts,” No. 5479-VI, dated July 6, 2012.

<sup>27</sup> Official name: Закон України «Про аграрні ноти» — “Law of Ukraine on Agrarian Notes,” No. 3586-IX, adopted February 22, 2024 (effective January 1, 2025).

<sup>28</sup> The concept of a “non-issuable security” [*neemisiyniy tsinniy papir*] is common in the legal

systems of former Soviet Union countries. It refers to securities that are not issued through a public offering and are not subject to registration with a securities regulator. Instruments falling into this category often function similarly to promissory notes or bills of exchange in common law systems, particularly in that they evidence a specific obligation (such as payment or delivery) and may be transferable. However, their legal treatment is shaped by civil law principles and national securities legislation.

## ii. Commodities Covered by Crop Receipts

Crop receipts are typically issued to finance the production of a statutorily defined set of agricultural commodities, including (1) plant-based crops grown on land, such as grains and coffee; (2) livestock including cattle; and (3) aquatic goods, such as farmed fish and seaweed. For example, the Brazilian Law defines agricultural commodities broadly to include all three of the above categories, as well as forestry and “plant extractivism.”<sup>29</sup> Agricultural commodities include not only “raw” commodities resulting from “primary” production, but also processed and manufactured agricultural commodities, such as pasteurized dairy products. In other words, midstream producers further down the value chain may issue crop receipts to finance the production of processed and manufactured food products (see Section IV-A for discussion of the scope of agricultural commodities covered under crop receipts legislation).

## C. TYPES

Crop receipts can be divided into two types: (1) commodity/physical crop receipts; and (2) financial crop receipts.

### i. Commodity/Physical Crop Receipts

A physical crop receipt facilitates the advance sale and in-kind exchange of agricultural commodities. In other words, the underlying transaction reflected in a

physical crop receipt is a sale, where the whole, or a portion of, the purchase price is prepaid to finance production, similar to a prepaid forward contract or a contract farming arrangement. In Brazil, physical crop receipts are not purchased by financial institutions or institutional investors, as the underlying transaction is commercial in nature. These financiers may be precluded by regulation from holding what is essentially an agricultural rather than a financial asset.

Crop receipts legislation provides for specific definitions of physical crop receipts that contain the following elements: (1) a legal classification, such as a negotiable document/document of title or security, (2) a promise/unconditional obligation to deliver specified agricultural commodities, (3) a security right in agricultural commodities and (4) an objective criterion for establishing the value of the agricultural commodities. The Brazilian Law on Crop Receipts, for example, defines a physical crop receipt as a “*liquid and certain title*, representing a promise to deliver agricultural commodities, with or without a guarantee.”<sup>30</sup> The Ukrainian Law on Crop Receipts provides that a physical crop receipt “establishes the unconditional obligation of the debtor, secured by a pledge, to deliver agreed agricultural commodities, the quality, quantity, place and term of delivery of which are specified in the crop receipt.” The Ukrainian Law on

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<sup>29</sup> “Plant extractivism” refers to the practice of harvesting non-wood products from natural forests and ecosystems for commercial or subsistence purposes. This can include gathering fruits, nuts, seeds, fibers, oils, resins and other plant-based resources from wild vegetation.

<sup>30</sup> Legislation in Brazil requires that the criteria used to calculate the value of the future

agricultural commodities covered in the crop receipt be included therein. This value is typically calculated on the basis of the price for the specified agricultural commodity on the business day immediately preceding the date of the issuance of the crop receipt.

Agrarian Notes provides for a nearly identical definition.

## ii. Financial Crop Receipts

A financial crop receipt enables banks, nonbank lenders and suppliers to provide agricultural loans, lines of credit and purchase-financing for equipment and inputs. The underlying agreement would typically require the borrower to issue a financial crop receipt covering the future harvest. The value of the expected quantity and quality of agricultural commodities would determine the amount of financing. A financial crop receipt may contemplate either a single payment or installment payments, in which case the conditions and schedule for fulfilling the obligations are stated therein. The interest rate is typically variable and determined by the cost of funds and the creditworthiness of the issuer (in this case, the agricultural producer).

Like physical crop receipts, financial crop receipts are defined in crop receipts legislation as instruments that contain the following elements: (1) a legal classification, (2) a promise/unconditional obligation to pay a specified sum of money, (3) a security right in agricultural commodities and (4) an objective criterion for establishing the amount of financing based upon the value of the agricultural commodities. The Brazilian Law on Crop Receipts defines a financial crop receipt as a “*liquid and certain title*,” constituting a promise to pay a sum of money that “may be used as an instrument to determine

credit limit,” based upon the value of the future harvest, “and (to) guarantee future obligations,” particularly through the pledge of future agricultural commodities.

The Ukrainian Law on Crop Receipts defines the financial crop receipt in a manner similar to its Brazilian counterpart. The financial crop receipt is defined as a crop receipt that “establishes the unconditional obligation of the debtor to pay a sum of money, the amount of which is determined according to an agreed formula, based upon the value of the quality and quantity of agricultural commodities.” The classification of a financial crop receipt as a document of title under the Ukrainian framework is problematic because it does not constitute a right to claim delivery of goods, unlike, for example, a warehouse receipt or bill of lading. A financial crop receipt is more analogous to a negotiable instrument, such as a promissory note or bill of exchange, which constitutes a right to claim payment of a sum of money. The Ukrainian Law on Agrarian Notes expands the definition of a financial agrarian note, defining it as a document “that establishes the unconditional obligation of the debtor to pay a sum of money, the amount of which may be fixed or variable, and may be determined by a formula taking into account prices for agricultural commodities...” In Serbia, the Law on Financing Agricultural Production (“the Serbian Law”)<sup>31</sup> provides for an Agreement for Financing the Production of Agricultural Commodities,<sup>32</sup> the transactional elements of which resemble those constituted by a

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<sup>31</sup> Official name: Закон о финансирању пољопривредне производње — “Law on Financing Agricultural Production,” Official Gazette of RS No. 128/2014.

<sup>32</sup> [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/3887-14Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/3887-14Lat.pdf) (in Serbian).

financial crop receipt. Unlike in Brazil and Ukraine, the legal framework for crop receipts in Serbia does not provide for the issuance of a special type of legal document, embodying the unconditional promise/obligation to pay a sum of money. An Agreement for Financing the Production of Agricultural Commodities is defined as “an agreement under which the debtor undertakes to pay for the [...] funds received from the creditor to finance the production of a specified agricultural commodity [...].” The Serbian Law also provides for special rules governing the pledge of future agricultural commodities, which is subject to registration in a collateral registry. The Serbian Law, for example, defines a pledge of future agricultural commodities in terms of a non-possessory security right registered in the Register of Pledges on Movable Property and Rights or Pledge Register.



### III. LAW GOVERNING ASPECTS OF CROP RECEIPTS

While crop receipts may be provided for in standalone crop receipts legislation, other laws may govern or affect individual aspects related to their issuance, transfer, registration, enforcement and use as investment instruments. This Section examines the effect of these laws including those governing (1) aspects specific to crop receipts, typically found in standalone crop receipts legislation, (2) farm organizations, (3) property rights in immovable and movable property, (4) negotiable instruments, (5) negotiable documents/document of title, (6) digital assets/electronic transferable records and (7) securities and financial instruments. When drafting crop receipt legislation, States should ensure that rules specific to crop receipts are properly coordinated with existing laws in these areas. Failure to properly coordinate the specific legal framework applicable to crop receipts with related laws could create conflicts and inconsistencies that undermine the uptake of crop receipts.

#### A. LAWS PROVIDING FOR CROP RECEIPTS

The deployment of crop receipts often depends upon the enactment of special rules that provide them with a unique set of legal qualities and features, while situating them within the existing property, commercial and financial law framework. Such a law could take the form of a standalone law on crop receipts, as enacted in Brazil and Ukraine. Alternatively, instead of a standalone law on crop receipts, for example, rules governing specific aspects of crop receipts could be included in a civil/commercial code or a

standalone law on financing the production of agricultural commodities (as in the case of Serbia, discussed further below). Ultimately, it will be up to the enacting State to decide which approach is most desirable, based on its unique goals and circumstances.

In Brazil, the legal framework for crop receipts has evolved in an ad hoc manner over the course of three decades, beginning with the introduction of the Brazilian Law on Crop Receipts in 1994, which established what is now commonly referred to as a physical crop receipt, issued in paper form. The Brazilian Law was amended in 2001 to provide for a financial crop receipt, facilitating the deployment of production loans. The Brazilian Law was further amended in 2020 to provide for the issuance and transfer of crop receipts in electronic form. The 2020 amendment also established a framework for the registration of crop receipts by securities intermediaries licensed by the Central Bank of Brazil. Crop receipts were recognized as financial assets pursuant to a 2022 amendment, facilitating their trading on capital markets.

In Ukraine, the legal framework for crop receipts shares many similarities with its Brazilian counterpart. The Ukrainian Law on Crop Receipts was enacted in 2012 (based on the Brazilian model) and provides for both a physical crop receipt and a financial crop receipt that may only be issued in paper form. The Ukrainian Law on Crop Receipts established a standalone Registry of Crop Receipts that is operated by the Ministry of Agrarian Policy and Food

and that records data on all issued receipts. In 2024 the Ukrainian Parliament passed the Ukrainian Law on Agrarian Notes (effective as of January 1, 2025), which provides for issuing and using a new instrument—agrarian notes, electronic versions of crop receipts. The Ukrainian Law on Agrarian Notes also establishes a separate registry for agrarian notes operated by the National Depository of Ukraine. Like the recent amendments to the Brazilian framework, the aim of the new Ukrainian Law on Agrarian Notes is “attracting funds to finance agricultural production on the capital markets.”

The Serbian legal framework for crop receipts is simpler than its Brazilian and Ukrainian counterparts. Unlike in Brazil and Ukraine, it does not provide for the issuance of a special undertaking embodying the unconditional promise/obligation of the issuer to deliver agricultural commodities or to pay a sum of money. Rather, the 2015 Law on Financing Agricultural Production provides for an Agreement for Financing the Production of Agricultural Commodities,<sup>33</sup> which resembles the transaction underlying a financial crop receipt, i.e., a secured agricultural production loan. An Agreement for Financing the Production of Agricultural Commodities is defined as “an agreement under which the debtor undertakes to repay the [...] funds received from the creditor to finance the production of a specified agricultural commodity [...].” The Serbian Law provides for a Registry of

Agreements on Financing Agricultural Production operated by the Agency for Business Registration, which records information about the financing agreement between the agricultural producer (debtor) and the financial institution (creditor). The Registry shares some features with crop receipts registries in Brazil and Ukraine, though it is not operated by a securities intermediary.

## B. FARM ORGANIZATIONS

Producers who issue crop receipts may operate in their individual capacities, such as sole proprietors, or they may form some type of legal entity. The informality of small-scale producers poses a risk for prospective lenders. Many laws that govern business formation impose requirements or costs that are prohibitive for small-scale producers. Some States have enacted laws that specifically address agricultural enterprises.<sup>34</sup>

UNIDROIT has undertaken a project to develop guidance on Collaborative Legal Structures for Agri-Enterprises.<sup>35</sup> The project has defined “agricultural enterprise” as “the carrying on by one or more persons of an organized economic activity, consisting of producing, administering or providing a service in the agri-food chain. The term “enterprise” includes any organized economic activity, whether or not it is commercial in nature.” Cooperatives are one of the most common types of organizational forms in agricultural

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<sup>33</sup> [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/3887-14Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/3887-14Lat.pdf) (in Serbian).

<sup>34</sup> For instance, Indonesian legislation recognizes “agricultural family or household.”

<sup>35</sup> UNIDROIT. Collaborative Legal Structures for Agri-Enterprises. <https://www.unidroit.org/work-in-progress/legal-structure-of-agri-enterprise/#1648126536690-9256b17a-4347>

markets.<sup>36</sup> Many agri-businesses operate as part of cooperative structures designed to produce value for their members. Many States have enacted laws on cooperatives, including those operating in the agricultural sector.<sup>37</sup> Such laws provide for tax exemptions, subsidies and other benefits. Crop receipts legislation may provide for the issuance of crop receipts by farm organizations, e.g., cooperatives (see further Section IV-A).

### C. LAWS GOVERNING PROPERTY RIGHTS IN IMMOVABLE AND MOVABLE PROPERTY

Crops that are growing are, by their nature, attached to the land, which raises several questions. First, crops may be considered part of the land, in which case any interest therein may need to be created in accordance with the land laws, such as by taking a mortgage. Second, an interest in the growing crop may be concurrently created under movable property and land law, which would necessitate a priority rule. Civil codes and property law define immovable and movable assets, things, goods, and similar categories to determine how a type of property such as “growing crops” may be classified. The French Civil Code, in Article 520, states that standing crops are part of immovable property by nature. The German Civil Code provides that an essential part of a land plot includes things firmly attached to the land,

such as crops grown on the land. Crops are part of the land as long as they are essential to the land. Similarly, the Civil Code of Georgia defines immovable assets as “a land plot together with the subsoil minerals existing therein, the plants grown thereon, and buildings and structures firmly attached thereto.” Growing crops are “plants grown thereon,” which means they would be considered immovable.

Growing crops may be understood as “movable assets by anticipation” as they will be harvested in the short term and thus become fully movable assets. This has become the reason for some laws treating them as movable assets even before they are fully severed from the land. The Georgian Civil Code provides that if a thing is for a “temporary use,” then it is not considered to be an “essential component” of the land. This provision covers all types of plants (e.g., trees, bushes, grass) regardless of how firmly the roots of the plants are associated with the land. The terms “essential component” and “temporary use” may be interpreted differently. An essential component may not be severed without either destroying the integrity of the component itself or extinguishing the purpose thereof, which may not be applicable to crops that are regularly harvested. Growing crops may become movable property upon the parties taking some action, such as concluding a contract for their sale.

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<sup>36</sup> UNIDROIT. 2023. Working Group for the Preparation of a Guide on the Legal Structure of Agricultural Enterprises. Issues Paper. <https://www.unidroit.org/wp-content/uploads/2023/05/Study-LXXXC-W.G.3-Doc.-2-Revised-Issues-Paper.pdf>, at para 74.

<sup>37</sup> COOP. ICA-EU Partnership, Legal Framework Analysis, Regional Report: Asia-Pacific. <https://coops4dev.coop/sites/default/files/2021->

[11/ICA-EU%20Partnership%20Legal%20Framework%20Analysis%20Regional%20Report%20Asia%20Pacific.pdf](https://www.unidroit.org/wp-content/uploads/2023/05/Study-LXXXC-W.G.3-Doc.-2-Revised-Issues-Paper.pdf) page 8 and Siregar, A. 2024. Agricultural Cooperatives in Four Asian Countries: A Review of Institutional History. *Reviews in Agricultural Science* 12: 24-44. [https://www.istage.jst.go.jp/article/ras/12/0/12\\_24/html-char/en](https://www.istage.jst.go.jp/article/ras/12/0/12_24/html-char/en).

Definitions of immovable property may be found in various laws of the same jurisdiction that may not be entirely consistent with one another. For instance, the definition of immovable property in the Georgian Law on Public Registry does not mention “plants” at all. Furthermore, the regulations in the Law on Public Registry expressly state that “for the purposes of registration, [...], plants, [...] shall not be regarded as an immovable thing.”

Uncertainty in the immovable property rights regime not only affects the effective utilization of land rights but also growing crops. In many jurisdictions (e.g., Albania), agricultural land remains unregistered. Even where ownership rights to the land may be clearly established, parcels may be owned by smallholder producers (e.g., 93 percent of land in Indonesia is owned by producers with modest plots averaging 0.6 hectares), which would not be large enough to generate a harvest to support crop receipts. The land may be fragmented for many other reasons. For instance, Albanian law recognizes the notion of “agricultural family,” which, pursuant to Articles 222-230 of the Civil Code, provides for co-ownership among the “family members.” Such small plots of land often lack access to irrigation and drainage canals.

## **D. SECURED TRANSACTIONS LAWS**

### **i. General Aspects**

Secured transactions laws enable the use of any movable assets as collateral for loans. The UNCITRAL Model Law on

Secured Transactions (MLST) in Article 2 defines “movable asset” to include any tangible and intangible assets. That broad definition is sufficient to extend its application to any commodities. The general rules of the MLST apply to commodities, whether growing, to be grown (see Art. 6(2)), or harvested and stored in a warehouse (see Art. 16). Kenya’s Movable Property Security Rights Act of 2017 takes a similar approach to the MLST in that it defines tangible assets to include crops and livestock, but it does not provide any further rules specific to crops or livestock.

Some secured transactions laws include rules that specifically apply to a particular type of asset. The MLST does so for receivables, negotiable documents and bank accounts, but not for crops. The Personal Property Security Acts (PPSAs) of Canada define “goods” to include growing crops as well as the unborn young of animals, and timber to be cut.<sup>38</sup> Malawi enacted its own PPSA in 2013, which included a definition of “farm products” that include crops, livestock and fish, as well as their unborn, offspring and products, whether or not raised or grown naturally or artificially. The Zambia Movable Property (Security Interest) Act of 2016 also includes a definition of “farm products.” The Malawi PPSA further defines “crops” as “crops and plants, whether grown, growing or yet to be planted attached to land by roots or forming part of trees but does not include trees unless the trees are grown for commercial purposes and sale.” This approach recognizes that a conflicting interest in the types of crops

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<sup>38</sup> Ontario Personal Property Security Act, R.S.O. 1990, c. P.10, s. 1(1).  
<https://www.ontario.ca/laws/statute/90p10>

covered by this definition could be created under the Land Act by way of a mortgage on the land.<sup>39</sup>

Laws that govern certain aspects of security rights and do not generally implement international standards may also include references to crops. Before the secured transactions reform in Malawi, this was the case in its Bills of Sale Act, 1967, which was based on the English Bills of Sale Acts. Such Acts apply only to the crops growing on the date of execution of the bill of sale, which limits their application to future crops.<sup>40</sup> However, jurisdictions with such legislation enacted special laws (e.g., the Producers' Stop Order Act) to enable producers to create security rights over future crops. One of the special features of the stop order was that the producer instructed a marketing institution, which undertook to buy the producer's crop in order to pay the purchase price to the financial institution

that had taken a security right in the growing crop.<sup>41</sup>

Carving out farm products and/or crops from the broader corpus of movable assets enables the inclusion of rules specific to that asset type.<sup>42</sup> The general rules on perfection by registration, and much less practically, possession, would apply to the perfection of security rights in growing crops. A document covering a security right in relation to crops may also be registered in the land registry, which then necessitates appropriate priority rules.<sup>43</sup> Modern secured transactions laws do not require a specific description of the collateral, including identifying the land on which the crop is growing. The parties may choose otherwise, especially when the grantor seeks to create a crop receipt specific to a particular parcel of land.

Unlike the MLST, several PPSAs provide for special priority rules.<sup>44</sup> Overall, these

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<sup>39</sup> Id., 35.

<sup>40</sup> Dubovec, Marek & Cyprian Kambili. *A Guide to the Personal Property Security Act: The Case of Malawi*. Pretoria University Law Press. 2015. p7. <https://www.pulp.up.ac.za/legal-dialogues/a-guide-to-the-personal-property-security-act-the-case-of-malawi>

<sup>41</sup> Id., 10-11.

<sup>42</sup> For instance, Section 17 of the Malawi PPSA provides: (1) Except as otherwise provided in this Act, a security interest can be created and perfected in crops and continues as such before they are planted, while growing and afterwards when cut or separated from the soil. (2) A security interest in crops shall be created only with the consent of the mortgagee or lessor under a lease with the duration of no more than three (3) years. (3) A perfected security interest in crops shall not be extinguished or prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of or upon the land on which the crops are growing. Another example is from the Ontario PPSA that in s. 12 provides: (1) A security agreement may cover after-acquired property. (2)

No security interest attaches under an after-acquired property clause in a security agreement, (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage.

<sup>43</sup> Supra. Ontario Personal Property Security Act, R.S.O. 1990, c. P.10, s. 54(1).

<sup>44</sup> The U.S. Uniform Commercial Code (UCC) 9-334(f) provides: A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property. The Ontario PPSA provides for a priority rule for a type of acquisition security right in s. 32: (1) A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the

provisions ensure that financing of crops through production loans may be structured under secured transactions laws that govern security rights in movable assets. These regimes are expected to be more enabling than the otherwise applicable land laws. However, many land laws continue to define land to include growing crops, and the secured transactions laws do not take a position on the nature of growing crops. Rights of creditors in crop receipts are thus affected by the underlying land law. In such circumstances, the producer-borrower may need to execute a mortgage or other security device over the land, which may require registration at the land recording office. The requirements for registration and formalities vary from State to State. Furthermore, recording fees are typically higher (often calculated as a percentage of the loan amount) than those charged by collateral registries.

## ii. Effect of Secured Transactions Law on Crop Receipts

Modern secured transactions laws, including the MLST, apply to loans secured with agricultural products, whether harvested, growing or future. They do not, however, provide for rules specific to crop receipts. Preferably, the secured transactions law specifically defines crop receipts, which would enable the inclusion of asset-specific rules, such as those concerning third-party effectiveness of security rights and priorities. If the

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crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise even though the person giving value has notice of the earlier

objective is to make crop receipts into capital market instruments, crop receipts legislation should not only confer on them the features of negotiability but also ensure that those aspects are recognized in the priority rules of secured transactions law.

CREATION: The crop receipt itself is likely sufficient to create a security right, as it is a signed writing by the grantor/producer that contains a description (often specific) of the collateral. Under a financial crop receipt, producers commit to repaying a loan at a fixed amount or an amount calculated in the future based on a pre-determined formula that involves an index price. These aspects are likely to satisfy the requirements of secured transactions laws for a sufficient description of a secured obligation. Civil codes or other specific laws may provide that a contract by which “one party undertakes the obligation to either transfer all of its future property or a part thereof to another person or encumber it with a usufruct shall be void, except where the contract has been concluded for particular items of future property.” Such requirements may preclude the issuance of crop receipts for future crops. Other requirements, such as notarizing agreements constituting crop receipts and excessive registration fees, may unduly increase the cost of creating security rights underlying crop receipts.

THIRD-PARTY EFFECTIVENESS: Secured transactions laws enable creditors to

security interest. (2) Where more than one perfected security interest is given priority by Subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced.

register a notice in the collateral registry (on registration, see further Section IV-C) to render their security rights effective against third parties. However, since they do not provide for crop receipts as a specific type of collateral, other mechanisms, such as control and registration in a special registry, will not be recognized. A secured transactions reform project should consider whether alternatives to registration in a collateral registry should be recognized (e.g., control, which may apply generally to electronic transferable records).

**REGISTRATION:** Security rights in growing crops are typically governed by secured transactions laws, which are underpinned by centralized, notice-based and electronic collateral registries. A secured creditor may

thus register a notice against existing and future crops, gaining effectiveness and priority against third parties. However, other laws may recognize a crop receipt as a special type of asset. In that case, the secured transactions law must be coordinated with the relevant legislation on crop receipts, particularly regarding the legal effect of registration.

Crop receipts may be subject to registration upon their issuance, similar to many laws that provide for the registration of electronic warehouse receipts. Those registration systems would also keep a record of transfers of crop receipts and eventual terminations. Crop receipts may also be issued as digital assets/tokens, in which case their transfers would not be centrally registered.



Registration of notices is a mechanism available for security rights in all types of assets under the MLST. In addition to registration, a State may consider an alternative mechanism to achieve third-party effectiveness, such as control or registration in a specialized registry. For instance, a secured transactions law may provide that a security right may be made effective against third parties upon the secured creditor taking the necessary steps to acquire control of the crop receipt. If the receipt is a token, a technical definition of control should be provided, along the lines of the UNIDROIT Principles on Digital Assets and Private Law (see Section III-G for further details). If the receipt is subject to registration in a crop receipts registry, this may also be recognized as an alternative to registration in a collateral registry. Recognition of alternative registration or control mechanisms would necessitate more complex priority rules. This approach works efficiently for security rights in several types of assets, especially negotiable documents, negotiable instruments and securities.

**PRIORITY:** Since secured transactions laws do not provide for crop receipts as a specific type of collateral, they do not include any special priority rules. As explained above, some secured transactions laws include priority rules specific to security rights in crops or farm products. If the secured transactions law provides for a special mechanism to make security rights in crop receipts effective against third parties, such as by control, it would need to include appropriate priority rules.

The law may confer a priority on a holder of a crop receipt through an acquisition security right. The MLST and modern secured transactions law limit the priority of acquisition security rights to specific types of property, including equipment, fixtures and inventory, and associated intellectual property rights. These standards and laws do not provide for acquisition security rights in agricultural commodities. Special priority rules of this nature were considered for “production loans” extended to grow crops under the U.S. Uniform Commercial Code Article 9. Those rules were offered as optional for States. This special priority may be justified as the lender extends a loan to enable the borrower to “acquire” a new asset—the crop. However, if the law classifies crop receipts as negotiable, the holder may acquire priority over an earlier-registered security right by taking possession or control, as with other negotiable instruments.

**ENFORCEMENT OF A SECURITY RIGHT:** The enforcement of a security right in crops may be governed by (1) general secured transactions law, (2) crop receipts legislation, and (3) judicial enforcement framework. (Section IV-E explores in more detail the enforcement aspects). It is important for such a framework to provide robust remedies for holders of crop receipts, as such remedies are a hallmark feature of the instrument.

**CONFLICT OF LAWS:** Modern secured transactions laws determine the law applicable to proprietary effects of security rights according to the law of the location of the grantor, subject to some exceptions. As a result, if the producer is located in State X, the law of that State would

determine the requirements for third-party effectiveness (e.g., registering a notice with the collateral registry established in that State) and priority. However, if the law provides for the registration of crop receipts in a specialized registry, it may be the law of the location of that registry that governs these aspects. Finally, if the crop receipt circulates as a “token,” it may be the law specified in the token itself that governs the proprietary effects. Other issues may also need to be addressed, such as the law governing the priority between the holder of a crop receipt claiming a security right in the growing crops and the rights of a mortgagee that extend to that crop.

## **E. LAWS GOVERNING NEGOTIABLE INSTRUMENTS**

Obligations of borrowers may be evidenced in security agreements, as well as in promissory notes. A promissory note is a negotiable instrument that does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money. However, an undertaking or power to give collateral or an authorization to dispose of collateral does not affect its characterization as a negotiable instrument.<sup>45</sup> A promissory note is not invalid if it references a pledge of collateral with the authority to sell it.<sup>46</sup>

A crop receipt may be constructed from a promissory note that references a security right in growing crops. The promissory note

must provide for the payment of a fixed amount of money, which would exclude physical crop receipts that are settled by delivery of a commodity rather than repayment of an advance. A promissory note may be transferred by the initial holder by delivery and endorsement or by other means, such as control, if the note has been issued in a digital form. The transferee would not only acquire the undertaking of the issuer/maker to make a payment, but also any rights that support that undertaking. A secured creditor would likewise acquire the benefit of a supporting right. Article 14 of the MLST expressly provides that a secured creditor with a security right in a negotiable instrument has the benefit of any personal or property right that secures the payment of a negotiable instrument without a new act of transfer. The MLST also provides rules governing the third-party effectiveness and priority of security rights in negotiable instruments that could encompass crop receipts.

However, laws on negotiable instruments do not apply to physical crop receipts, and financial crop receipts that include issuer undertakings or conditions may well disqualify them as negotiable instruments. In any case, laws governing negotiable instruments in general, and promissory notes in particular, have been criticized as outdated and as not reflecting their intended functions in the 21<sup>st</sup> century.<sup>47</sup> Attempting to characterize crop receipts as promissory notes secured with a security right may thus not be the most efficient

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<sup>45</sup> U.S. UCC 3-104(a)(3).

<https://www.law.cornell.edu/ucc/3/3-104>

<sup>46</sup> English Bills of Exchange Act of 1882, s. 83(3).

<https://www.legislation.gov.uk/ukpga/Vict/45-46/61/section/83>

<sup>47</sup> See generally James Steven Rogers. 2012. *The End of Negotiable Instruments – Bringing Payment Systems Law Out of the Past*. ISBN: 9780199856220.

avenue to operationalize a crop receipts system.

## **F. LAWS GOVERNING NEGOTIABLE DOCUMENTS / DOCUMENTS OF TITLE**

Some crop receipts initiatives seek to characterize crop receipts as negotiable documents or documents of title, presumably to obtain the benefit of applying established rules. This approach, which involves applying a law designed for a different type of asset, has also emerged in other areas, such as digital assets. However, a closer analysis reveals that crop receipts cannot and should not be characterized as negotiable documents/documents of title.

Many laws recognize a special type of document that not only evidences a right to an underlying asset, but also effectively represents it so that the transfer of the document also transfers rights to the underlying asset. The MLST refers to these documents as “negotiable documents,” while many domestic laws define “documents of title” (e.g., the U.S. Uniform Commercial Code Article 7). Warehouse receipts and bills of lading are two prominent types of documents that represent rights to commodities stored in a warehouse or transported by a carrier, typically on a vessel. The UNCITRAL Legislative Guide on Secured Transactions defines “negotiable document” as “a document, such as a warehouse receipt or a bill of lading, that embodies a right to delivery of tangible assets and satisfies the requirements for negotiability under the law governing negotiable documents.” Accordingly, a crop receipt that embodies an undertaking to deliver the crop, after it is harvested, may be characterized as a

document of title. However, this definition applies only for the purposes of a secured transactions law and defers to the applicable law that governs warehouse receipts, bills of lading and similar types of documents. Those laws invariably define such documents as issued by some bailee of goods, whether a warehouse operator or a transportation company, that is not the borrower under a loan secured with the assets covered by those documents. For instance, the 2024 UNCITRAL-UNIDROIT Model Law on Warehouse Receipts (MLWR) defines a warehouse receipt in Article 1 as “an electronic record or paper document issued and signed by a warehouse operator by which the warehouse operator (a) acknowledges holding the goods covered by it on behalf of the holder; and (b) promises to deliver the goods to the holder.” A crop receipt would lack two critical features that characterize documents of title: (a) an undertaking by a third-party bailee, and (b) the holding of goods that already exist, rather than crops that are yet to be grown and harvested.

Crop receipts should be subject to a bespoke set of rules, including in secured transactions laws. The approach should be more similar to the rules for “chattel paper” in the U.S. Uniform Commercial Code Article 9 and the Canadian PPSAs, which define it as “the right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record...” These secured transactions establish a set of rules, particularly regarding the third-party effectiveness and priority governing security interests in chattel paper, whether issued electronically or in paper form. Overall, for a creditor holding a crop receipt to obtain the benefit of a right in the

growing crop, there are other avenues to achieve the same result rather than characterizing crop receipts as negotiable documents or documents of title.

### **G. LAWS GOVERNING DIGITAL ASSETS / ELECTRONIC TRANSFERABLE RECORDS**

Crop receipts may be issued in either paper or electronic form. Technologies offer numerous benefits and facilitate the digitalization of various documents, including crop receipts, warehouse receipts, and other documents commonly generated within supply chains. When a crop receipt is issued as a digital record, questions may arise as to whether a law that governs digital assets could apply to such crop receipts. This may be especially true for a State that has not enacted a law on crop receipts.

Some recently adopted laws (e.g., the U.S. Uniform Commercial Code Article 12 and the Dubai International Financial Centre (DIFC) Digital Assets Law [DIFC Law No. 2 of 2024]) recognize a new asset class of controllable electronic records or digital assets. In 2023, UNIDROIT adopted the Principles on Digital Assets and Private Law (DAPL) that apply to digital assets, which are broadly defined as “electronic records capable of being subjected to control.” Given the broad definition of control, in Principle 6, electronic crop receipts may be subject to legislation governing digital assets, unless expressly excluded. However, crop receipts are not merely information, but electronic records linked to actual assets: (1) the right to collect a loan/right to buy a commodity, and (2) a security right in the commodity. Whether or not the digital crop receipt only

evidences/references those assets or effectively embodies them is a matter of law other than the DAPL (see Principle 4). Accordingly, if a State has not enacted a crop receipts law, but has enacted a law along the lines of DAPL, digital crop receipts would be considered as linked assets. If a State has enacted laws on crop receipts and digital assets, it may wish to ensure that crop receipts are excluded from the application of a law on digital assets.

### **H. LAWS GOVERNING SECURITIES AND FINANCIAL INSTRUMENTS**

Crop receipts may be characterized as “financial instruments” or “securities” with the purpose of making them an investible instrument, particularly for foreign investors or other investment vehicles that may not be authorized/licensed to invest in agriculture. Complex questions need to be considered as to the benefits of such characterizations, both from the perspective of applying the public law framework governing the issuance of securities and various governance requirements applicable to issuers and securities themselves, as well as the private law framework governing the transfer, custody and use of crop receipts as collateral.

An advantage of this approach would be to apply established concepts of private law governing transfers of securities, including their use as collateral. Laws that govern financial collateral may become applicable. Furthermore, transactions with crop receipts characterized as securities would be eligible for clearing and settlement through the infrastructure for financial instruments.

The downside to this approach is the application of complex rules governing securities markets. Those rules would need to be simplified for crop receipts that are issued by producers. Furthermore, it is unclear what benefits the infrastructure for clearing and settlement of securities would deliver for crop receipts that are not fungible and often involve small amounts. While the application of financial collateral laws may enhance predictability, it will cause difficult issues in the regulatory framework for financial collateral, which has historically been limited to securities, such as bonds and shares, as well as cash. Given the variety of crop receipts that may potentially be issued in the particular market, characterizing them as “securities” might increase the complexity and cost of many transactions.

Securities laws, like Georgia’s Securities Market Law, define “security” as “a transferable financial instrument and/or the rights that may be offered to the public in the form of equity or debt securities (or combination thereof), or can be converted into a security, or which carries the right to subscribe for or purchase such security, investment contracts, and other instruments and rights connected with securities.” The definition excludes a specific list of instruments, such as promissory notes. Accordingly, in the absence of specific legislation governing crop receipts, promissory notes secured with a right in the future crop would not be subject to Georgia’s Securities Market Law.

As explained below (see Section III-H), the private law framework for securities may be designed to permit any financial instrument to be held with a securities

intermediary, which could trigger the application of private law governing securities. However, that does not necessarily lead to the legal conclusion that crop receipts held in accounts with intermediaries are characterized as securities for the purpose of public securities law. As a result, certain market players may be precluded from investing in crop receipts that are not securities, even though their transfer and collateralization may be facilitated through the private securities law.

Institutional investors are likely to be more interested in financial products structured from the underlying crop receipts, akin to asset-based securities. Brazilian laws recognize agribusiness securitization companies that may invest only in crop receipts through credit rights investment funds. Bonds backed by crop receipts have been rated by international credit rating agencies and have attracted significant investor interest. Only crop receipts issued by large farming enterprises may be suitable for structured finance products, as this helps keep monitoring costs and risks at a reasonably low level. The applicable legal and regulatory framework governing structured finance in general would apply to such transactions. It should enable crop receipts to be converted into a financially investible instrument

#### **I. USING EXISTING LAWS OR RECOGNIZING CROP RECEIPTS AS A NEW ASSET CLASS**

As explained in the previous Subsections, a crop receipt may be constructed from existing laws. The advantages of this approach are avoiding the necessity of enacting a standalone law and utilizing the

existing legal framework, including the infrastructure for holding and settling transfers. Significant disadvantages include the application of laws designed for a different type of asset which may not be suitable for dealing appropriately with crop receipts, and the complexity of the legal framework, forcing the prospective user to engage in interpreting the existing laws to determine how they might apply to crop receipts.

A physical crop receipt is essentially a forward contract to sell the crop. Contract law would govern the transfer of rights to purchase the crop for a sum of money at some point in the future. The relationship between the producer and the holder of the crop receipt would not be that of a debtor and creditor, but rather a seller and buyer, unless the buyer also takes a security right in the growing crop. This type of crop receipt would have utility primarily for persons involved in the trading of the particular commodity and who may be comfortable and experienced in dealing with the associated risks, including defenses, that may be raised by the producer. Contract law would not provide confidence to prospective holders of financial crop receipts who are experienced in dealing with financial risks and who expect to be immune from various proprietary claims and defenses. In other words, such persons would be interested in a financial instrument that is negotiable rather than a set of contractual rights.

A financial crop receipt may be structured using a promissory note that is secured with a right in the underlying commodity. Careful drafting would be required to ensure that references to the rights in the underlying commodity are not interpreted

as conditions that either void the promissory note or render it a non-negotiable set of contractual rights. However, this approach would necessitate the implementation of legislation, such as the Model Law on Electronic Transferable Records, which recognizes digital equivalents of negotiable instruments. The peculiarities of crop receipts, especially their registration with an authority, would necessitate further amendments in the legislation.

Crop receipts may also be characterized as securities, which would extend the application of a legal framework and market infrastructure (e.g., securities intermediaries, exchanges, clearing and settlement systems) to transactions involving crop receipts. As explained above, this approach would not be appropriate for physical crop receipts, which are not financial instruments but rather rights to the delivery of goods. A law may characterize financial crop receipts as securities, which would trigger the application of various securities laws and regulations. These laws and regulations should be simplified for financial crop receipts. This may be attractive to prospective investors seeking to invest in financial instruments, but it may place an onerous burden on the issuers of crop receipts, which are typically producers. For these and other reasons, the legal framework might provide for an option to “opt in” to the securities laws, such as when the holder agrees to deposit their crop receipt with an intermediary that credits it to a securities account. This is provided for in the UNIDROIT Convention on Substantive Rules for Intermediated Securities, in which Article 1 defines “securities” as “any shares, bonds or other

financial instruments or financial assets (other than cash) which are capable of being credited to a securities account and of being acquired and disposed of in accordance with the provisions of this Convention.” Accordingly, if a financial asset, including a crop receipt, is credited to a securities account and may be transferred by an entry into that securities account, it will be subject to that legal framework.

Enactment of a bespoke regime for crop receipts would have several benefits. First, it would make it easier for financial institutions and investors to assess any legal risks rather than having to incur the cost of legal opinions as to how an existing framework designed for other assets applies to crop receipts. Second, this integrated legislative approach would allow the legislator to deal cogently with both private law and regulatory aspects. Third, it would make it easier to coordinate amendments to other related legislation, such as the secured transactions law



## IV. STRUCTURE OF A LAW ON CROP RECEIPTS

This Section discusses the structure of a law on crop receipts, based upon legislation in Brazil, Serbia and Ukraine, as well as relevant international standards such as the MLST and the MLWR. Crop receipts legislation should at a minimum contain the following elements: (1) definition and scope of application, (2) issuance of crop receipts, (3) registry of crop receipts, (4) transfer of crop receipts to subsequent holders, (5) enforcement and (6) concluding provisions.

### A. DEFINITIONS AND SCOPE

The Subsection discusses (1) the key terms and definitions that should be considered for inclusion in crop receipt legislation, (2) the legal classification of crop receipts and (3) the rules prescribing who may issue crop receipts, what types of agricultural commodities may be covered, and who may purchase crop receipts. These three aspects determine the scope of a crop receipts law.

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<sup>48</sup> A “debtor under a crop receipts,” for example, is defined as an “individual,” including a legal entity that has legal rights to operate on the agricultural land, i.e., own, lease, sublease, “who issues a crop receipt for registration of his obligation to supply agricultural products or pay a sum of money according to the terms specified in the crop receipt.” Meanwhile, a “creditor under a crop receipt” is defined as an “individual or legal entity that provides funds, services, supplies goods, and/or performs work [in exchange] for a crop receipt, providing it with the right to demand the performance of obligations.” The term creditor includes transferees of crop receipts. The Registry of Crop Receipts of Ukraine is defined as a

### i. Key Terms and Definitions

Enactment of a bespoke regime for crop receipts should provide definitions of key terms, such as “crop receipt” and “crop receipts registry.” The Ukrainian Law on Crop Receipts, for example, provides for general definitions of “Crop Receipt,” “Debtor under a Crop Receipt,” “Creditor under a Crop Receipt,” “Registry of Crop Receipts,” and “Agricultural Commodities.”<sup>48</sup> Likewise, the Serbian Law on Financing Agricultural Production provides definitions of “Agreement for Financing the Production of Agricultural Commodities,” “Delivery Obligation,” “Monetary Obligation,” “Registry of Agreements for Financing the Production of Agricultural Commodities,” “Debtor,” “Creditor,” “Pledge of Future Agricultural Commodities,” “Pledgor,” “Pledgee,” “Future Agricultural Commodities,” and more. Such definitions should align with related legal frameworks, including the secured transactions framework.<sup>49</sup>

### ii. Legal Classification of Crop Receipts

States should exercise caution when classifying “crop receipts” as a particular

“centralized database storing information concerning the mandatory contents of issued and redeemed crop receipts.”

<sup>49</sup>[https://www.paragraf.rs/propisi/zakon\\_o\\_zalozn\\_om\\_pravu\\_na\\_pokretnim\\_stvarima\\_upisanim\\_u\\_re\\_gistar.html](https://www.paragraf.rs/propisi/zakon_o_zalozn_om_pravu_na_pokretnim_stvarima_upisanim_u_re_gistar.html) (in Serbian). For instance, the definitions in the Serbian Law that concern pledge (listed above) generally align with the Serbian Law on Pledge of Movable Assets and Rights Registered in the Pledge Register, which provides for definitions of “Pledge Agreement,” “Pledgor,” “Pledgee,” “Movable Assets,” “Right of Claim and Other Rights,” “Receivables,” etc.

type of asset. Two general approaches can be identified in the classification of crop receipts. One is to classify them as a new type of asset that confers upon holders an unconditional right to demand performance of the obligation embodied in the crop receipt, i.e., the right to demand delivery of a specified agricultural commodity or the right to demand payment of a specified sum of money. This approach has been adopted in Brazil and Ukraine. The other approach would be to attempt to fit a crop receipt under an existing type of asset. A similar challenge faces States with respect to digital assets.

Carving out a special type of asset for crop receipts provides the legislator with an opportunity to define the features of crop receipts that are specific to the particular type of transaction they support, rather than applying the features of other assets, such as negotiable instruments, to crop receipts. The unique features of crop receipts would make it challenging to find a suitable classification among existing analogous legal categories, such as liquid and certain titles, negotiable instruments, negotiable documents, securities or financial assets.<sup>50</sup> Defining a crop receipt according to existing legal categories creates the potential for conflicts and inconsistencies. To avoid these challenges, States should consider defining crop receipts as a new asset class subject to a separate set of rules (refer to Sections III-I and IV-A for further discussion). Another approach is to classify crop receipts under

one of the existing legal categories such as a negotiable instrument.

### **iii. Rules Limiting Issuance and Acquisition of Crop Receipts, and Types of Agricultural Commodities that may be Covered**

Crop receipts legislation typically contains rules specifically providing for (1) who is authorized to issue crop receipts, (2) what types of agricultural commodities may be financed through the issuance of a crop receipt, and (3) what types of individuals and entities may acquire a crop receipt.

#### **Who may issue crop receipts**

The Brazilian Law on Crop Receipts generally provides that authorization to issue a crop receipt lies with “agricultural producers,” including “agricultural cooperatives and associations of agricultural producers whose purpose is to produce, manufacture or market agricultural commodities.” Agricultural cooperatives and associations are important links between smallholder producers and markets for agricultural commodities (see Section III-B for discussion of farm organizations). It is important to note that agricultural producers would include legal entities with the legal right to operate on agricultural land, whether they own, lease or sublease it.

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<sup>50</sup> <https://zakon.rada.gov.ua/laws/main/3586-20#Text> (in Ukrainian). The Ukrainian Law on Agrarian Notes classifies agrarian notes as “non-issuable securities.” Non-issuable securities are not subject to all of the same rules as “issuable securities,” which apply to stocks and bonds, and

impose stricter requirements on issuers, among other. Under Ukrainian law, “non-issuable security” includes “debt securities.”

## What types of agricultural commodities may be covered

The term “agricultural commodity” is defined broadly under the Brazilian Law to encompass all products generated from activities related to (1) agriculture, livestock, forestry, plant extractivism, fishing and aquaculture, as well as their “by-products,” (2) the conservation, recovery and sustainable management of native forests and the provision of environmental services on agricultural land, (3) processing and manufacturing of agricultural commodities and (4) production or marketing of agricultural inputs, agricultural machinery and equipment, as well as storage equipment. Under the Brazilian framework, for example, a tractor manufacturer could issue a crop receipt to a financial institution, thereby gaining access to funds to purchase mechanical parts and other inputs used in the production of tractors.

The term “agricultural commodity” under the Brazilian framework thus extends not only to all types of “food products,” but also equipment and machinery used to produce such products. A crop receipt supported by agricultural equipment and machinery has different features from a crop receipt supported by plant- or animal-based products. When drafting crop receipts legislation, States should be cautious when determining the scope of the law, particularly where the legal frameworks governing the creation and perfection of security rights in crops, on the one hand, and equipment, on the other, are different.

Ideally, the secured transactions framework establishes a unified framework for the creation and perfection of security rights in both types of collateral, but this is not the case in Brazil, for example, where crops are treated as immovable property.

The scope of the Ukrainian Law on Crop Receipts is more limited compared to Brazil. In Ukraine, a crop receipt may only be issued to finance the production of food products (not agricultural equipment/machinery), including (1) “live animals” and (2) “products of plant origin.”<sup>51</sup> This approach was also followed in Serbia where the Law on Financing Agricultural Production defines agricultural commodities as “harvesting or harvested primary products” generated from “plant production and other uses of an agricultural holding” registered in the Registry of Agricultural Holdings.<sup>52</sup> However, the Ukrainian Law on Agrarian Notes applies to primary processed products.

## Who may acquire a crop receipt

The Ukrainian Law on Crop Receipts limits who may acquire a crop receipt by reference to the definition of the term “creditor under a crop receipt,” which encompasses initial holders of crop receipts as well as subsequent ones (transferees). “Creditor under a crop receipt” is defined as “an individual or legal entity that provide funds, services, supplies goods, or performs work as a counter-obligation pursuant to an agreement.” Creditors include financial institutions that

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<sup>51</sup> <https://zakon.rada.gov.ua/laws/show/2371a-14#Text/> (in Ukrainian).

<sup>52</sup> An agricultural holding is defined under the Serbian Law as “a production unit such as a

company, agricultural cooperative, institution or other legal entity, entrepreneur or producer that carries out agricultural production and is registered in the Agricultural Registry of Farms.”

originate an agricultural production loan or a subsequent holder that purchases a crop receipt as an investment instrument. The Serbian Law on Financing Agricultural Production takes a more limited approach, defining “creditor” as a “legal entity, entrepreneur or natural person” that provides “money or other resources based on a financing agreement.”

## **B. ISSUANCE OF CROP RECEIPTS**

This Subsection discusses the various legal issues related to the issuance of crop receipts, including (1) the nature of the relationship between a crop receipt and the underlying sale or financing agreement, (2) mandatory contents of crop receipts, (3) the legal effect of failure to include mandatory information, (4) optional information, and (5) amendment, cancelation and termination of crop receipts.

### **i. Relationship of Crop Receipt to the Underlying Sale or Financing Agreement**

A crop receipt reflects an economic relationship between an agricultural producer and a finance provider that is governed by the law of contracts. If the sale/financing agreement and crop receipt constitute separate documents, then there is potential for gaps and inconsistencies that could undermine the validity of the crop receipt and/or negatively impact the rights of subsequent holders (transferees) who were not parties to the underlying contract. While crop receipts legislation does not address the relationship of crop

receipts to the related sale or financing agreement, the unconditional nature of the obligation/promise reflected in the crop receipt is such that the issuer should not be able to invoke any conflicting provisions in the underlying sale or financing agreement to avoid performance or hold up enforcement. Case law from Ukraine, for example, has confirmed that the terms of the crop receipt are independent of those of the related agreement, and in this sense, they are “separate transactions.”<sup>53</sup>

The MLWR provides an inspiration for an approach in Article 9, which refers to the “incorporation” of the underlying agreement in the warehouse receipt. Article 9, as adapted to crop receipts, would provide that a crop receipt may state that it includes some or all terms of the underlying agreement. A statement in a crop receipt to the effect that it reflects “all of the terms of the underlying agreement” would nullify the effect of any additional or conflicting provisions (in corresponding contractual documents) on the terms of the crop receipt, including a separate sale or financing contract. In cases where the crop receipt states that it does not reflect all of the terms of the underlying agreement, a copy of such agreement or of its relevant provisions should be made available to potential transferees upon request. In any case, Article 9, as adapted to crop receipts, would provide that the terms in the underlying contract that are inconsistent with the stated terms of a crop receipt cannot be invoked (by the issuer/producer) against subsequent holders in any way that diminishes their rights. These rules not only

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<sup>53</sup> See, e.g., <https://reyestr.court.gov.ua/Review/106254803> (in Ukrainian).

define the relationship between a crop receipt and the underlying agreement but also protect the rights of subsequent holders. They should be considered for inclusion by States when drafting crop receipt legislation that provides for the issuance of a crop receipt, separate from the underlying agreement.

## **ii. Mandatory Contents of a Crop Receipt**

Crop receipts legislation typically provides for the mandatory contents of a crop receipt. Mandatory information largely reflects the essential elements of the underlying sale or financing transaction, depending on whether it is a physical crop receipt or a financial crop receipt. The mandatory information of a physical crop receipt and a financial crop receipt thus differs in some respects.

The Brazilian Law on Crop Receipts lists the mandatory contents for both physical and financial crop receipts in a single provision. Such mandatory contents include (1) the title “physical crop receipt” or “financial crop receipt,” (2) delivery or expiration date and, if applicable, settlement schedule, (3) identity of the creditor and clause “to the order,” (4) unconditional promise to deliver specified agricultural commodities, and the location where the agricultural commodities will be produced, (5) location and conditions of delivery, (6) description of any rights supporting the crop receipt, including the identity of any pledgor or guarantor, (7) date and location of issuance, (8) signature of the issuer and any guarantors, including pledgors and (9) the method and conditions of settlement.

The Ukrainian Law on Crop Receipts, in contrast, lists the mandatory requirements

of crop receipts in separate provisions, making it clearer which contents are mandatory for each type of crop receipt. This Law, for example, provides that a financial crop receipt must contain the following information: (1) the title “financial crop receipt,” (2) the term of payment of funds or payment schedule, (3) identity of the creditor and conditions of transfer of rights under a crop receipt, (4) an unconditional obligation to pay a sum of money based upon the value of future agricultural commodities, (5) conditions and method of payment, (6) description of the collateral, including location and title documents of the land plots on which the pledged agricultural commodities are being grown, (7) date and location of issuance and (8) identity of the debtor.

## **iii. Legal Effect of Failure to Include Mandatory Contents**

In the interest of legal certainty, crop receipts legislation should include a rule that clearly states the legal effect of failure to include the mandatory information in a crop receipt; one approach would be to include a provision that an instrument lacking all mandatory contents is not legally considered a crop receipt. The legal effect of such disqualification would be that the legal relationship between the agricultural producer (issuer) and the finance provider (initial holder) would be governed by some other law, such as the general law of contract. This approach was adopted in the Ukrainian Law on Crop Receipts, which provides that “[a] document that does not [include all mandatory contents] is not a crop receipt.” This approach is not optimal because it has

the potential to invalidate the rights of a subsequent holder.<sup>54</sup>

An alternative approach, provided for under the MLWR, would be to identify a handful of “core elements” reflected, for example, in the definition of a crop receipt that must be present for it to qualify as a crop receipt. Failure to include the remaining “mandatory elements” would not affect the validity of the crop receipt, but rather expose the agricultural producer (issuer) to liability for any losses caused by its omissions or inaccuracies. The nature of liability would be determined by some other law. This approach places the obligation on the agricultural producer to issue a crop receipt that contains correct and complete information.

Ideally, standardized forms that provide designated fields for all mandatory information are adopted in practice. This would reduce the risk of crop receipts being issued without the mandatory information. The risk is further reduced for electronic receipts that cannot be issued if certain information has not been provided. If crop receipts require registration, then the registry system would ensure that no mandatory information is absent.

#### **iv. Optional Contents of a Crop Receipt**

Crop receipts legislation should also provide for the inclusion of optional contents as agreed between the agricultural producer (issuer) and the finance provider/purchaser (initial holder). For example, the Ukrainian Law on Crop

Receipts provides that “the debtor and the creditor may agree on the inclusion of additional information in the text of the crop receipt that does not contradict the provisions of this Law.” The MLWR lists specific “[a]dditional information that may be included” such as the existence of insurance.

#### **v. Amendment, Cancellation, and Termination of Crop Receipts**

Crop receipt legislation should provide clear rules governing the amendment, cancellation and termination of crop receipts, which may be facilitated by the entity appointed to administer the Registry of Crop Receipts. An amendment consists of changes to the original contents of a crop receipt, such as the value of the agricultural commodities, terms of delivery (in the case of a physical crop receipt) or terms of repayment (in the case of a financial crop receipt). Such changes would require an agreement between the issuer and the holder.<sup>55</sup> The same applies to cancellation, where it is agreed to extinguish the effectiveness of a crop receipt, prior to the issuer’s obligations being satisfied. This would occur, for example, if the holder agreed to forgive the obligation embodied by the crop receipt.

Finally, termination concerns the extinguishment of the obligations constituted in a crop receipt, such as through delivery of the agricultural commodities or payment of the outstanding monetary obligation, in accordance with the terms of the crop

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<sup>54</sup> This approach also increases the due diligence costs of potential transferees of crop receipts that must assess whether all mandatory contents are present and accurate.

<sup>55</sup> See Art. 3(5) of the Brazilian Law on Crop Receipts.

receipt. Under the Ukrainian Law on Crop Receipts, upon satisfaction of the obligation embodied by a financial crop receipt, for example, the holder must, within three days, “make the inscription ‘Executed’ on the crop receipt [...] and return the crop receipt to the issuer.” This action triggers the right of the issuer “to apply to the person who performs notarial acts to make a record of termination [...] in the relevant registries.”

The law should permit holders to effectuate these changes directly in the registry, without having to engage an intermediary, such as a notary. The system should be set up similarly to a collateral registry where the creditor has the power to amend or cancel a registration directly.

### **C. REGISTRY OF CROP RECEIPTS**

Two core features that underpin crop receipts—a registry and efficient enforcement mechanisms—reduce the risk of lending and make it attractive for prospective financiers. As explained above (see Section III-D), registration in the collateral registry may be designated as the mechanism to render security rights in agricultural commodities effective against third parties. This Section first explores whether a separate registry should be established to register the issuance and transfers of crop receipts. Second, it examines whether that special registry should also be vested with the authority to register notices of security rights.

#### **i. Establishment of Registry, including Key Features of the Registry and Appointment of Registering Authority**

Reform projects may consider designating an existing registry, such as the collateral registry, to record the issuance and transfers of crop receipts. However, collateral registries are not records of ownership rights; thus, they are not suitable for performing this function. If a State has a functioning and modern collateral registry, given the experience and expertise of the entity operating the collateral registry, it may be designated to operate a registry for the issuance and transfers of crop receipts. Operating multiple registries through a single entry point may facilitate searches and provide the operator with an opportunity to offer additional services, such as a composite search of the two records to determine the existence of registrations against a person who may have granted a security right and issued a crop receipt. Authorizing a government department or establishing a new entity to operate the registry may increase implementation costs.

The registry for crop receipts should be central, unlike many land registries that are regional or county-based. Centralization of records facilitates due diligence for prospective creditors. The registry should be electronic and easily accessible at no or low cost for searches. Access requirements, including fees, should be similar to those charged by modern collateral registries. Anyone who has satisfied certain requirements to identify themselves should be allowed to search the crop receipts registry directly, without having to engage a notary or other intermediary.

The law should specify certain fundamental operational aspects of a registry, reserving administrative and procedural details for the implementing regulations. For instance, the law should provide for the process of registering crop receipts and their transfer. Ideally, the law would provide for a standardized form of crop receipt that the parties to a financing transaction would fill out. The registry should record only the standardized forms rather than any documentation executed by the borrower and secured creditor, such as security agreements. This would reduce the cost and time needed to complete the initial registration.

The law should specify whether the borrower or the secured creditor is entitled to register the crop receipt. Similar to secured transactions laws, the law may leave this question open-ended, allowing the parties to decide who will register the receipt. Typically, the secured creditor is the initial holder of the crop receipt who submits a form to the registry. Since the receipt will identify the borrower/grantor, the registry may generate an automated confirmation of registration which will be provided electronically to the borrower. This avoids the need for the borrower to transfer the crop receipt to the secured creditor.

The registry may be set up to maintain user accounts in which crop receipts are held. This is similar to collateral registries that maintain user accounts for secured creditors, reflecting the registrations made and allowing only those users to make changes to their registrations, including amendments and cancellations. Registries

for electronic warehouse receipts are set up in a similar manner.

The law may require any prospective transferee to create a user account with the registry. If the initial secured creditor wishes to transfer a crop receipt, it may need to identify a transferee and then execute instructions that will cause the system to “debit” the crop receipt from the account of the transferor and “credit” it to the account of the transferee. An account may also be established by an intermediary, such as a lawyer who holds crop receipts on behalf of its customers.

## **ii. Legal Effect of Registration**

The law must provide for the legal effect of registration and transfer. Registration may be a condition for the existence or validity of the crop receipt. In other words, a crop receipt has no legal effect until the registry has credited the account of a person. The lack of registration should not have an invalidating effect on the underlying transaction, which should be effective according to its terms. For instance, the security agreement will still be enforceable and a security right in the commodity effective against third parties if proper registration has been made in the collateral registry.

Similarly, the law must provide for the legal effect of registering a transfer. Credit of a transferee’s account should be a primary condition for transferring the crop receipt. The law must specify whether other conditions must be met for the transferee to take free of competing proprietary interests (see Section IV-D below).

## D. TRANSFER OF CROP RECEIPTS TO SUBSEQUENT HOLDERS (TRANSFEREES)

### i. Paper versus Electronic Crop Receipts

If the law has not designated a crop receipt as a special asset class, its transfers will be governed by the law that governs the asset that the receipt is a functional equivalent of. For instance, the crop receipt may be a promissory note, so that any transfer will be governed by the law of negotiable instruments. That law may be limited to paper-based negotiable instruments, in which case, legal uncertainty will exist for transfers of digital crop receipts. If the receipt does not qualify as a negotiable instrument, its transfer will be governed by the rules for assignment of contractual claims. The requirements and resulting protections for transferees, including secured creditors, will vary depending on whether the crop receipt is characterized as a promissory note or a contractual claim.

Designation of a crop receipt as a *sui generis* asset will require the specification of transfer requirements in the law. These requirements will invariably differ based on the nature of the crop receipt, whether paper-based or electronic. Paper receipts may require delivery to the transferee, similarly to the transfer of negotiable instruments or negotiable documents of title. Transfers of their digital counterparts may require a change of control (especially if receipts circulate as tokens) or registration, such as by debiting and crediting user accounts at the central registry.

### ii. Nature of Rights Acquired by the Transferee, including Protections against Competing Claims

The preceding requirements, though “mechanical aspects,” are nevertheless a critical ingredient in characterizing the rights of transferees. The fundamental approach in legal systems is the so-called “*nemo dat*” rule under which the transferee acquires all rights of its transferor. This principle is expressed in Article 16(1)(b) of the MLWR, which provides that the transferee “acquires such rights to the receipt and the goods as the transferor was able to convey.” However, crop receipts legislation may consider vesting the transferee with rights that may be greater than those of the transferor; essentially, making them negotiable. This is the case of the MLWR, which, in Article 17, provides that a transferee may become a protected holder if the transferee (1) acquired possession or control of the receipt, (2) acted in good faith and without knowledge of competing claims, and (3) acted in the ordinary course of business or financing. These requirements may vary depending on the type of asset, such as negotiable instruments and digital assets.

The second important aspect for transferees is to define the “quality” of rights they may acquire. The quality is not only the nature of the proprietary rights, but also whether those rights are subject to competing interests and defenses. Article 18(1) of the MLWR provides that “[a] protected holder of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt, and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of

the receipt, free of any right, claim or defence of the warehouse operator or any other person, other than any right, claim or defence that arises under the terms of the receipt or under this Law.” This provision thus immunizes the protected holder from any pre-existing rights, claims and defenses, a feature that enhances the marketability of warehouse receipts. The State would need to carefully consider these aspects and articulate the policy decision in legislative text.

## E. ENFORCEMENT

Enforcement consists of “pre-default” actions, which are preventative in nature and typically involve monitoring the agricultural commodities serving as collateral, as well as “post-default” actions when the issuer has failed to perform on its obligations by the date specified in the crop receipt.

### i. Monitoring the Collateral

Legislation provides for the right of holders to monitor agricultural commodities serving as collateral under the crop receipt. Such rights typically flow from general secured transactions legislation that provides that where the collateral is in the possession of the debtor, the secured creditor has the right to inspect the asset. The Ukrainian Law on Crop Receipts provides detailed rules on “[m]onitoring the subject of the pledge supporting crop receipts.”<sup>56</sup> Article 8 provides that holders of crop receipts have the “right, independently or with the involvement of third parties, to monitor the future harvest

of agricultural commodities throughout the entire duration of the pledge [...]” Article 8 provides that “entering the premises is allowed only in the presence of the debtor under the crop receipt.” Article 8 also provides that “[a]fter harvest, monitoring is carried out by inspecting the collected agricultural commodities,” including providing “access to their storage locations.” However, Article 8 prohibits the holder of a crop receipt from “[d]irectly interfering or obstructing the debtor’s economic activities,” unless provided for by law.

### ii. Post-Default Enforcement

Legislation should provide for expeditious enforcement proceedings in case of default. While extra-judicial enforcement is generally the quickest and most efficient, laws may provide requirements that render it inefficient, such as notifications and mandatory time periods that delay particular steps. Debtors may object to extra-judicial enforcement, which leaves the creditor with the only option to pursue a remedy through the judicial system. Since these obligations are typically due after harvest, an enforcement action pursuant to a crop receipt would ordinarily entail (1) taking possession of a harvested crop, and (2) in the case of a financial crop receipt, selling the crop and applying the proceeds to the outstanding loan/credit balance.

As inefficient enforcement mechanisms have a negative impact on the availability and the cost of credit, the MLST refers to “expeditious enforcement proceedings,” without providing a definition. Such

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<sup>56</sup> This term is defined in terms of “collecting information about the subject of the pledge and the debtor under a crop receipt, systematizing it in

databases and using such databases in the manner prescribed by law.”

proceedings may include proceedings involving only affidavit evidence, proceedings in which hearings are held, challenges are disposed of, and decisions are rendered in as expeditious a manner as possible, and proceedings in which court decisions are enforced without an official seizure or sale of assets. UNIDROIT is currently working on a guidance document on best practices for effective enforcement, which includes recommendations relating to enforcing security rights.<sup>57</sup>

Crop receipts legislation in Brazil and Ukraine offers holders of crop receipts access to expeditious enforcement proceedings by virtue of their classification as “*liquid and certain titles* that are enforceable against the commodity indicated therein.” Under Brazilian civil procedural law, liquid and certain titles allow holders to bypass the process for establishing the existence of an unsatisfied obligation and to proceed directly to the recovery process. In other words, presentation of a crop receipt that is past due alone would constitute sufficient proof of default. Likewise, the Ukrainian Law on Crop Receipts provides that an obligation embodied by a crop receipt that is past due “is a sufficient confirmation of the incontestability of the creditor's claims.” In such cases, “the creditor [...] has the right to apply to the person authorized to perform notarial acts for the performance of an executive inscription, which is subject to immediate execution.” The Law further provides that based on such document a bailiff ensures transfer of the collateral

under the crop receipt (i.e., the harvested crop) to the creditor within seven days. The Ukrainian Law on Agrarian Notes goes even further: an agrarian note itself (in particular its executive part) is an enforcement document, and instead of involving a notary the creditor simply generates a special extract from the Agrarian Notes Register for enforcement purposes once the note becomes past due.

## F. CONCLUDING PROVISIONS

Concluding or final provisions in legislation address administrative details, such as effective dates, repeals and transitional rules that lay out how the law is implemented and enforced. These provisions are essential for ensuring a smooth transition between old and new laws, resolving potential conflicts, and clarifying how the law should be interpreted and enforced.

### i. Entry Into Force

States should specify the date when, or the mechanism according to which the new law will enter into force. For example, the new law might specify that it is to enter into force on a specified date or on a date to be specified by a separate decree. The placement of this article and its precise formulation will also depend on whether the new law is contained in a standalone statute or incorporated into a general civil or commercial code. In determining when the new law will enter into force, careful consideration should be given both to obtaining the economic benefits of the new law as soon as possible and to minimizing

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<sup>57</sup> UNIDROIT. Enforcement: Best Practices. <https://www.unidroit.org/work-in-progress/enforcement-best-practices/>

disruptions that may be caused by significant changes in existing practices resulting from the new law.

While the new law should come into force as soon as is possible after the text is final and the registry system required to support it is operational, some lead time is necessary in order to (1) publicize the existence of the new law; (2) enable potential registry users to familiarize themselves with the operation of the Crop Receipts Registry, including its registration and search requirements, and to undertake the necessary preparations to use the registry services; (3) educate participants about the effect of the new law and enable them to prepare for compliance with the new rules and to develop new forms of financing agreements and other required documents; and (4) educate other affected constituents, such as buyers, lessees, judgment creditors and insolvency representatives, on the impact of the new law on their rights. Crop receipts legislation in Ukraine, for example, provides that “[t]his Law shall enter into force two months after the date of its publication.”

## ii. Amendments to other Laws

Given that crop receipts legislation fits into an existing legal and regulatory framework (as also discussed in Section III-I) it is critical that affected laws are correspondingly amended to eliminate any gaps and inconsistencies that hinder the uptake of the new system. This is particularly true with respect to the secured transactions legislation that crop receipts legislation is expected to supplement in some cases. For example, the new Ukrainian Law on Agrarian Notes provides for several amendments to the Law on

Securing the Rights of Creditors and Registration of Encumbrances related to enforcement, including several exclusions. Because a crop receipt is classified as a “non-issuable security” registered in the National Depository, the new Ukrainian Law also provides for several amendments to the Law on the Depository System of Ukraine and the Law on Capital Markets and Organized Commodity Markets.



## V. PUBLIC AND GOVERNMENT SUPPORT

### A. LAW REFORM, PUBLIC AWARENESS, AND CAPACITY BUILDING

The government plays a crucial role in law reform by initiating changes to existing laws, enacting new legislation, and ensuring the implementation and enforcement of those changes. This entails working with various bodies, including law reform commissions and other government agencies, to address specific issues and improve the legal framework. Governments may engage in public consultations and stakeholder forums to gather input on proposed reforms and ensure inclusiveness in the process. By raising public awareness, initiatives gain legitimacy, build trust, and increase the likelihood of stakeholder engagement and participation.

Capacity building is a critical component of the law reform process as it equips individuals, organizations, and communities with the necessary skills, knowledge and resources to effectively implement and sustain legal changes. This is particularly important because law reforms are often complex and require expertise to understand, implement and monitor. By strengthening capacity, initiatives can ensure that reforms are not just implemented, but also understood, utilized and adapted by those they affect. This involves an analysis of government capacity and stakeholders' understanding, support and readiness for crop receipts reform in the first place.

The first step in this analysis is identifying key government and private-sector

stakeholders, which would typically encompass (1) central banks and/or monetary authorities, including departments responsible for financial inclusion and/or agricultural finance; (2) ministries of agriculture, commerce and trade; (3) securities exchange commissions and national depositaries; (4) development banks, particularly those specializing in the agricultural sector; and (5) commercial banks with agricultural lending departments.

### B. LEVERAGING EXISTING FINANCIAL AND MARKET INFRASTRUCTURE TO SUPPORT CROP RECEIPTS FINANCE

As explained above (see Section III-I), crop receipts may be designed from the existing legal and technological infrastructure. Agricultural lending is inherently risky, and many financial institutions are reluctant to extend credit to the agricultural sector or excessively over-collateralize loans. Governments have launched support mechanisms to help financial institutions manage the credit risk of their borrowers, including (1) public guarantee schemes, (2) direct lending programs, or (3) specialized agricultural credit institutions.

A state or public guarantee scheme partially (sometimes up to 90 percent) covers any losses a lender incurs upon the borrower's default. A guarantee scheme may also be organized by the private sector or as a partnership between the public and private sectors. Such schemes may be designed to support a particular type of business (e.g., micro, small and medium enterprises), but may also be geared

toward the agricultural sector. The following are examples of guarantee schemes for the agricultural sector: the Agricultural Credit Guarantee Scheme Fund (ACGSF) in Nigeria; the Private Agriculture Sector Support Program (PASS) in Tanzania; the Fondo Agropecuario de Garantías (Agricultural Guarantee Fund) (FAG) in Colombia; and the Fondo Nacional de Granitas de los Sectores Agropecuarios, Forestal, Pesquero y Rural (National Guarantee Fund for the Agricultural, Forestry, Fisheries and Rural Sectors) (FONAGA) in Mexico.<sup>58</sup> However, many schemes have failed to achieve their objectives and exacerbated the volume of nonperforming loans in the economy.

The credit products they support range from loans to acquire a farm or equipment, to production loans. For instance, Ghana's credit guarantee scheme (GIRSAL) guarantees loans for all agricultural value-chain activities, including input supply, primary production, processing, aggregation, transportation, storage, marketing and export.<sup>59</sup> Some of the laws even expressly reference crop receipts, such as the law governing the Kosovo Credit Guarantee Fund. The impact of such laws on agricultural lending and sustainability has been mixed.<sup>60</sup>

Governments may also directly channel credit to agricultural producers who would otherwise not qualify for a loan. To that

end, they may establish agricultural development banks or rural credit agencies, such as the Agricultural Development Bank Limited, Nepal, which is primarily owned by the Government of Nepal.



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<sup>58</sup> Benni, N. 2021. Impact Evaluation of Credit Guarantee Schemes in Agriculture. Methodology and Guidelines. FAO, Rome. <https://www.rfilc.org/wp-content/uploads/2021/12/Impact-evaluation-of-credit-guarantee-schemes-in-agriculture.pdf>, p3.

<sup>59</sup> GIRSAL. Agricultural Credit Risk Guarantee Scheme. <https://www.girsal.com/agricultural-credit-guarantee-scheme/>

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