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THE WAREHOUSE RECEIPT SYSTEM ACT

CHAPTER 350

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CHAPTER 350

WAREHOUSE RECEIPT SYSTEM ACT

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CHAPTER 350

WAREHOUSE RECEIPT SYSTEM ACT

[Date of assent: 12th June, 2019.]

[Date of commencement: 2nd July, 2019.]

An Act of Parliament to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities, the establishment of the Warehouse Receipt System Council and for connected purposes

[Act No. 8 of 2019.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Warehouse Receipt System Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Agriculture and Food Authority" means the Agriculture and Food Authority established under section 3 of the Agriculture and Food Authority Act (Cap. 317);

"agricultural commodity" means all agricultural produce, the storage of which is determined by regulations to be subject to this Act and includes goods that are packed, processed or otherwise transformed and stored in a warehouse;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

"central registry" means the central registry established under section 30;

"collateral manager" means a person appointed by the owner or any other person who has an interest in agricultural commodities stored in a warehouse with the intention of monitoring or taking custody of the agricultural commodities;

"Council" means the Warehouse Receipts System Council established by section 3;

"county executive committee member" means the county executive committee member responsible for matters relating to agriculture in the respective county;

"electronic warehouse receipt" means a warehouse receipt that has been generated, sent, received or stored by electronic, optical or similar means;

"holder" means a payee or endorsee of a negotiable or non-negotiable warehouse receipt;

"inspector" means an officer of the Council or an authorized officer appointed by the Council in the *Gazette*, to carry out inspections under this Act;

"negotiable receipt" means a receipt in which it is stated that the goods received will be delivered to the bearer or on the order of any person named in the receipt;

"owner" does not include a mortgagee or pledgee;

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"person" includes a corporation, partnership or any other form of business entity or two or more persons having a joint or common interest;

"purchaser" includes mortgagee or pledgee;

"warehouse operator" means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;

"warehouse operator's lien" means the right of a warehouse operator to recover, against the goods covered by a warehouse receipt or on the proceeds thereof, charges payable by the depositor for or in connection with the storage and handling of the goods in the possession of the warehouse operator;

"warehouse" means a licensed building or other protected enclosure in which goods are stored for the purpose of safekeeping, issuance of warehouse receipts or license and includes field warehouses and a plant or other facility where the goods are packed, processed or otherwise transformed;

"warehouse receipt" means a receipt issued by licensed warehouse operator as evidence that specified commodities of stated quantity and quality, have been deposited at particular locations by named depositors; and

"warehouse receipt system" means part or the whole of the process of depositing commodities in a licensed warehouse, the issuance of a warehouse receipt reflecting the quantity and quality of the deposited commodity, the management of the transfer of the receipt as a document of title and includes, but is not limited to, the regulation of warehouses and actors associated in the processes.

PART II – ESTABLISHMENT OF THE
WAREHOUSE RECEIPT SYSTEM COUNCIL

3. Establishment of the Warehouse Receipt Systems Council

(1) There is established a Council to be known as the Warehouse Receipt System Council.

(2) The Council shall be a body corporate, with perpetual succession and a common seal, and shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing such other things or acts necessary for the proper performance of the functions of the Council and which may lawfully be done or performed by a body corporate.

(3) The Council shall consist of—

- (a) a chairperson, who shall be appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
- (c) the Principal Secretary for the time being responsible for matters related to finance or a representative;

- (d) one person nominated by the Council of Governors and appointed by the Cabinet Secretary;
- (e) the Director-General of Agriculture, Food and Fisheries Authority or a representative;
- (f) the chief executive officer of the Council who shall be an *ex officio* member;
- (g) one person nominated by the umbrella body representing farmers in Kenya and appointed by the Cabinet Secretary;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council and appointed by the Cabinet Secretary;
- (i) one person nominated by the umbrella body representing bankers in Kenya and appointed by the Cabinet Secretary; and
- (j) one person nominated by the umbrella body representing warehouse operators in Kenya and appointed by the Cabinet Secretary.

(4) A person appointed as a member of the Council by the Cabinet Secretary under subsection (d), (g), (h), (i) and (j) shall be—

- (a) persons who have the relevant expertise, qualification and experience in the agricultural sector and any other relevant sector; and
- (b) appointed through a competitive and transparent process.

(5) A person is qualified for appointment as chairperson of the Council if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution;
- (c) holds a degree from a university recognised in Kenya, in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business;
 - (iv) procurement; or
 - (v) business management; and
- (d) has at least eight years' experience in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business;
 - (iv) law;
 - (v) procurement; or
 - (vi) administration.

(6) A decision of the Council shall not be invalid by reason of a vacancy in the Council.

(7) The chairperson and members of the Council appointed under subsection (3)(d), (f), (g), (h), (i) and (j) shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years.

(8) A member of the Council other than the chief executive officer may vacate office—

- (a) by resignation by a letter addressed to the Cabinet Secretary;
- (b) on the written recommendation of the body which the member represents revoking the nomination of that member;
- (c) upon being found liable for gross misconduct or abuse of office in contravention of the Public Officers Ethics Act (Cap. 185B) or any other law;
- (d) if the member is absent, without permission of the chairperson of the Council, from three successive meetings of the Council of which the member has received notice;
- (e) if the Council determines that the member is incapable of performing the member's duties by reason of mental or physical infirmity;
- (f) upon adjudication or admission of bankruptcy; or
- (g) upon conviction for an offence relating to corruption or contravention of Chapter Six of the Constitution and sentenced for a term exceeding six months imprisonment without an option of a fine.

4. Functions of the Council

The Council shall—

- (a) facilitate the establishment, maintenance and development of the Warehouse Receipt System for agricultural commodities produced in Kenya;
- (b) oversee the functioning of the Warehouse Receipt System to ensure the efficiency, effectiveness and integrity of the system;
- (c) establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities;
- (d) establish and maintain a central registry for the management of warehouse receipt transactions under the Act;
- (e) promote the development of a national network of privately or publicly managed warehouses that have the capacity to issue warehouse receipts;
- (f) prescribe the duties of warehouse operators, inspectors, graders and weighers, and collateral managers, operating under this Act in relation to the care of and responsibility for the stored agricultural commodities and related duties;
- (g) develop and implement, in conjunction with relevant Government agencies, an efficient commodity grading and weighing system that ensures quantity and quality assurance and facilitate the enforcement of commodity standards necessary for the warehouse receipting system;
- (h) monitor and oversee the issuance, suspension or revocation of registration or licences issued under this Act;
- (i) prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;
- (j) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties under the Act;

- (k) advise the Cabinet Secretary on matters relating to agricultural commodity trade and warehousing; and
- (l) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or Regulations made under the Act.

5. Functions of the county executive committee member

The county executive committee member—

- (a) shall establish and maintain a county registry for the management of warehouse receipt transactions under this Act;
- (b) shall promote the development of a county network of privately or publicly managed warehouses that have the capacity to issue warehouse receipts;
- (c) may issue, suspend or revoke registration or licenses issued under this Act;
- (d) shall enforce the standards prescribed by the Council under this Act;
- (e) shall ensure the inspection of warehouses in the county;
- (f) shall promote confidence in and participation of farmers in the respective county in the warehouse receipt system;
- (g) shall develop and implement strategies to facilitate the utilisation of the warehouse system by smallholder farmers;
- (h) shall create support mechanisms to facilitate access to warehouses by all farmers in the respective county; and
- (i) may carry out any other function necessary or incidental to the implementation of this Act.

6. Powers of the Council

The Council shall have all the powers necessary for the proper performance of the functions of the Council under this Act and, in particular but without prejudice to the generality of the foregoing, the Council shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Council in such manner and for such purposes as best promote the purpose for which the Council is established;
- (c) receive any gifts, grants, donations or endowments made to the Council or any other moneys in respect of the Council and make disbursements therefrom in accordance with the provisions of this Act;
- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider appropriate and in furtherance of the purposes for which the Council is established;
- (e) open a banking account or banking accounts;
- (f) offer services to any person upon such terms as the Council may from time to time determine; and
- (g) may at any time, with or without application, carry out inspections or cause to be inspected and examined all warehouses and warehouse operators and collateral management companies operating under the Act.

7. Conduct of the affairs of the Council

(1) The business and affairs of the Council shall be as provided in the Schedule.

(2) Except as provided for in the Schedule, the Council may regulate its own procedure.

8. Remuneration of members of the Council

The members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

9. Chief executive officer

(1) There shall be a chief executive officer of the Council who shall be appointed by the Council through a competitive recruitment process, on such terms and conditions of service as the Cabinet Secretary may approve.

(2) The chief executive officer shall, subject to the direction of the Council, be responsible for the day to day management of the activities of the Council.

(3) A person is qualified for appointment as the chief executive officer of the Council, if the person—

- (a) holds a degree from a university recognised in Kenya;
- (b) has relevant experience in management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(4) The chief executive officer shall serve for a term of three years and shall, subject to satisfactory performance, be eligible for re-appointment for a further term of three years.

(5) The chief executive officer may—

- (a) at any time resign from office by a notice in writing addressed to the Chairperson of the Council;
- (b) be removed from office by the Council if the chief executive officer—
 - (i) breaches the terms and conditions of the employment contract;
 - (ii) is unable to perform the functions of the office by reason of a mental or physical infirmity;
 - (iii) is convicted of an offence and sentenced to imprisonment for a term exceeding six months;
 - (iv) adjudged or admits in writing to being bankrupt; or
 - (v) conducts himself in a manner deemed to be inconsistent with this Act.

10. Staff of the Council

The Council shall employ such other staff as it may consider necessary for the proper and efficient discharge of the functions of the Council, on such terms and conditions of service as it may, determine.

11. Consultants and experts

(1) The Council may engage the services of consultants or experts as it considers appropriate to assist in the discharge of its functions under this Act.

(2) The Council shall publish in the *Gazette*, the names of persons engaged under subsection (1).

12. Funds of the Council

The funds of the Council shall consist of—

- (a) such moneys as may from time to time be provided by Parliament for the purposes of the Council;
- (b) moneys borrowed by the Council with the approval of the Cabinet Secretary and subject to such limitations and conditions as may be imposed by the National Treasury; and
- (c) revenue or fees collected for services rendered by the Council.

13. Financial year

The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year.

14. Annual estimates

The annual estimates of the Council shall be prepared in accordance with the Public Finance Management Act (Cap. 412A).

15. Parties to proceedings before the Court

(1) The Council shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Council.

(2) The books of accounts of the Council shall be audited in accordance with the Public Audit Act (Cap. 412B) and the Public Finance Management Act (Cap. 412A).

16. Reports

(1) The chief executive officer shall, cause to be prepared a report of the operations of the Council for every quarter and an annual report for every year.

(2) The chief executive officer shall submit the reports prepared under subsection (1) to the Council and to the Cabinet Secretary—

- (a) in the case of a quarterly report, within one month after the end of the quarter to which the report relates; or
- (b) in the case of an annual report, within four months of the end of the year to which the report relates.

(3) Each report shall contain, in respect of the period to which it relates a description of the activities of the Council.

(4) In addition to what is required under subsection (3), each annual report shall include the financial statements of the Council for the year to which the report relates.

(5) The Cabinet Secretary shall, within thirty days after receiving an annual report, transmit it to both Houses of Parliament.

PART III – REGISTRATION, LICENSING
AND INSPECTION OF WAREHOUSES

17. Licensing of warehouse operators

(1) A warehouse operator shall apply to the respective county executive committee member for a licence to operate within the Warehouse Receipt System.

(2) An application under subsection (1) shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) The county executive committee member may—

- (a) issue a licence where the applicant meets all the requirements set out in regulations; or
- (b) decline to issue a license for the operation of a warehouse where the county executive committee member establishes that—
 - (i) the warehouse is not suitable for the proper storage of agricultural commodities;
 - (ii) the operator is incompetent to operate a warehouse in accordance with this Act; or
 - (iii) sufficient reason exists within the purposes of this Act for not issuing such licenses.

(4) A license issued under this Part shall be valid for a period of twelve months from the date of issue and may be renewed subject to compliance of any set conditions.

(5) A person who operates a warehouse under the warehouse receipts system without a licence issued by the county executive committee member, commits an offence.

(6) Each county executive committee member shall furnish the Council with details of a licence issued under subsection (1) within seven days of issuance of the licence.

(7) The Council shall annually publish the names of licensed warehouses in the *Gazette* and in at least one daily newspaper of nationwide circulation.

18. Performance bond

(1) A person applying for a licence under this Act shall, further to other requirements prescribed by the Council or imposed under this Act, provide a performance bond in such form as the Cabinet Secretary may prescribe.

(2) A Performance bond shall serve as a financial assurance for the fulfilment of all obligations arising out of the licence under this Act, including potential costs relating to rescue, recovery of other costs and fines, penalties or compensation for violations against this Act, and shall be drawn upon in the prescribed manner.

(3) The form of financial assurance acceptable under this section shall include

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- (a) surety bond;
 - (b) trust fund with pay-in period;
 - (c) insurance policy;
 - (d) cash deposit; or
 - (e) annuities.

19. Insurance

A person shall not qualify for the grant of a licence under this Act unless that person provides an insurance policy securing the respective warehouse and goods against fire, flood, theft, burglary, earthquake, explosion and any other risk as the Cabinet Secretary may prescribe.

20. Appeal to the Council

A person who is aggrieved by a decision of the county executive committee member may, within thirty days of being notified of the decision, appeal to the Council in the prescribed manner.

21. Revocation of licence and suspension of licence or operations

(1) The county executive committee member may suspend or revoke a licence

- (a) if a warehouse operator transfers all or part of his or her control over the licence;
- (b) immediately a licensed warehouse commences the process of dissolution or is dissolved; or
- (c) if the warehouse operator violates or fails to comply with this Act.

(2) The county executive committee member shall before revoking or suspending a licence, inform the licensee of the intended revocation or suspension, in writing, and give the licensee an opportunity to make representations before making a determination.

(3) Upon the revocation of a licence, the county executive committee member shall, within fourteen days of the revocation, notify the licensee of the revocation and require the licensee to, within fourteen days of receipt of the notification, surrender the licence to the county executive committee member.

(4) A licensee who, without reasonable cause, fails to surrender a licence within the period specified in subsection (3) commits an offence and is liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding one year, or to both.

(5) The Council may suspend the operations of warehouse operators, inspectors, weighers or graders operating under the Act, for failure to comply with any provision of this Act.

(6) Where a licence has been suspended or revoked, the respective county executive committee member shall appoint an independent warehouse manager to operate the warehouse in the interim until the matter is resolved.

(7) The county executive committee member shall furnish the Council with details of a warehouse whose licence has been revoked within seven days of the revocation of a licence by the county executive committee member.

(8) The Council shall publish the names of a warehouse whose licence has been revoked in the *Gazette* and in at least one daily newspaper of nationwide circulation.

(9) The Cabinet Secretary shall in consultation with the Council make regulations to provide for management of a warehouse whose license has been suspended or revoked and commodities stored therein.

22. Fees

The county executive committee member shall charge fees for initial warehouse inspection and issuance of a warehouse operator's licence as may be prescribed by the Council.

23. Warehouse Receipts System Dispute Resolution Committee

(1) There is established a Warehouse Receipts Dispute Resolution Committee which shall hear and determine appeals relating to—

- (a) the refusal to grant a licence;
- (b) the imposition of any conditions on a licence;
- (c) the revocation, suspension or variation of a licence;
- (d) a decision of a warehouse inspector;
- (e) complaints by registered, licensed, or other persons operating under this Act; or
- (f) any other decision of the Council or a county executive committee member under this Act.

(2) The Warehouse Receipts System Dispute Resolution Committee shall consist of—

- (a) a chairperson who shall be an advocate of the High Court of Kenya of not less than seven years standing and with experience in dispute resolution, appointed by the Cabinet Secretary; and
- (b) two other persons with experience in dispute resolution, appointed by the Cabinet Secretary.

(3) The term of office of the Warehouse Receipts Dispute Resolution Committee shall be for a period of three years.

(4) A person who has been aggrieved by any decision of the Council relating to the matters set out in subsection (1) may, within thirty days of being notified of the decision, appeal to the Warehouse Receipts Dispute Resolution Committee in the prescribed manner.

(5) The appellant shall state grounds of the appeal which may include, among others, the following grounds—

- (a) the decision is either unlawful under the laws of Kenya;
- (b) the decision exceeds the authority of the Council under the Act;
- (c) the decision is contrary to the express policies of the Council as set forth in the Act; or
- (d) the decision was based on fraud or influenced by corrupt practices.

(6) The Cabinet Secretary in consultation with the Council and relevant stakeholders shall make regulations on the operation and structure of the Warehouse Receipts Dispute Resolution Committee.

24. Grading and weighing of agricultural products

(1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws relating to weights and measures.

(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a mandated institution.

(3) The Council shall prescribe guidelines on the minimum qualifications and competencies required of graders and weighers.

25. Inspection of stored products

(1) The chief executive officer, appointed Council Inspectors or authorized officers of the Council may inspect any agricultural commodity stored in a licensed warehouse and records relating to warehouse receipts where it is considered necessary.

(2) The Council shall appoint by notice in the *Gazette* inspectors who shall exercise such powers in accordance with regulations made under this Act.

26. Publication of general inspections

The chief executive officer may, from time to time publish the results of any inspection made under the Act, including the names and locations of the licensed warehouses inspected and the names of the operators licensed under this Act.

27. Examination of books and records of licensed warehouses and warehouse operators

The chief executive officer may, through authorized officers, employees or agents examine all insurance contracts professional indemnities, warehouse receipts registry, books, records, papers, and accounts of warehouses licensed under this Act and of the warehouse operators working in such warehouses.

28. Regulations

The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying into effect of the provisions of this Part.

PART IV – WAREHOUSE RECEIPTS

29. Warehouse receipts

(1) A warehouse operator shall issue a warehouse receipt for any agricultural commodity deposited in his or her warehouse.

(2) A warehouse receipt may be in hard or electronic form.

(3) A warehouse receipt shall be a document of title to goods and need not be in any particular form, but must contain the following information—

- (a) the name and physical address of the warehouse operator;
- (b) the name and physical address of the warehouse where the goods are stored;
- (c) the license number of the warehouse operator;
- (d) the date of issue of the receipt;
- (e) the serial number of the receipt;
- (f) the particulars of the depositor;
- (g) a statement whether the goods will be delivered to the bearer, to a specified person or his order for negotiable receipt;
- (h) the description of the agricultural commodity including the type, grade, crop year and season and weight;
- (i) the signature of the warehouse operator, which may be made by his authorized agent;
- (j) a statement that the agricultural commodity covered by the warehouse receipt is insured by the warehouse operator for the full value thereof; and
- (k) security features to be determined by the Council.

(4) The details in a warehouse receipt shall not be altered for any reason.

30. Establishment of central registry

(1) There is established a Central Registry which shall be operated by the Council.

(2) The Central Registry shall have the necessary infrastructure to link it with a central depository system of a commodities exchange licensed by the Capital Markets Authority.

(3) The chief executive officer shall put in place the infrastructure under subsection (2).

(4) The chief executive officer shall be the Registrar for the purpose of registering any transaction relating to a warehouse receipt issued under the Act.

(5) A warehouse receipt issued in accordance with this Act, including any negotiation in respect of it shall be delivered up to the Registrar for registration within fourteen days of any such issue or negotiation.

(6) A certificate of registration signed by the Registrar shall be conclusive evidence of the issue or negotiation of a warehouse receipt.

(7) The Cabinet Secretary in consultation with the Council may make regulations to govern the day to day operations of the Central registry.

31. Replacement of receipts

(1) Any loss, theft or destruction of the warehouse receipt shall be reported to the warehouse operator who shall notify the central registry.

(2) A warehouse operator may, on the request of the holder of a warehouse receipt, issue a warehouse replacement receipt for a lost, stolen or destroyed warehouse receipt, where the request is accompanied by a police report of the loss, theft, or destruction of the receipt.

(3) A warehouse operator shall notify the central registry of the issuance of a replacement for a warehouse receipt that is lost, stolen or destroyed.

(4) A person who presents or deals with the original receipt after a replacement receipt has been issued commits an offence.

32. Warranty and standing of duplicate receipt

A replacement receipt issued under section 31 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.

PART V – OBLIGATIONS AND RIGHTS OF WAREHOUSE OPERATOR UPON THEIR RECEIPTS

33. Obligation of warehouse operator to deliver

(1) A Warehouse operator shall deliver the goods referred to in a warehouse receipt to the holder of the receipt or depositor upon the presentation of the receipt.

(2) Where the warehouse operator refuses or fails to deliver the goods in compliance with the provisions of this section, the warehouse operator shall be required to prove the existence of any lawful act for the refusal or failure.

34. Wrongful release of goods

Where a warehouse operator delivers agricultural commodities in a warehouse to a person who is not lawfully entitled to the possession, the warehouse operator is liable for the loss.

35. Separation of goods and fungible goods

(1) A warehouse operator may commingle agricultural commodities of the same type and grade.

(2) A warehouse operator is liable, to each depositor or holder, for the care and redelivery of a depositor or holder of the commingled agricultural commodity to the same extent and under the same circumstances as if the agricultural commodity had been stored separately.

36. Attachment or levy upon goods for which negotiable receipt has been issued

(1) If goods are delivered to the warehouse operator by the owner or by a person whose act in conveying title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in possession of the warehouse operator, be attached by garnishment or otherwise, or be levied on under an execution, unless the receipt be first surrendered to the warehouse operator, or its negotiation enjoined.

(2) The warehouse operator shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to the operator or impounded by the court.

37. Warehouse operator's lien

(1) A warehouse operator has a lien on the goods covered by a warehouse receipt or on the proceeds of those goods in his or her possession for all lawful charges in the storage contract.

(2) A warehouse operator is entitled to all remedies allowed by law to a creditor against a debtor, for the collection from the depositor of all charges and advances which the depositor has expressly contracted with the warehouse operator to pay.

(3) A warehouse operator's lien for a claim which has become due may be satisfied by the warehouse operator giving a written notice to the person on whose account the goods are held, and to any other person known by the warehouse operator to claim an interest in the goods:

Provided that:

- (a) the written notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified;
- (b) if the warehouse receipt has been registered in the Central Registry, the warehouse operator shall also give written notice to the chief executive officer.

PART VI – NEGOTIATION AND TRANSFER OF RECEIPTS

38. Negotiation by endorsement

A warehouse receipt issued to a person may be negotiated by endorsement and delivery to another specified person.

39. Persons capable of negotiating a Warehouse Receipt

A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 38 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.

40. Rights acquired after negotiation of warehouse receipts

Subject to the provisions of this section, a person to whom a receipt has been duly negotiated shall acquire—

- (a) such title to goods as the person who negotiated the receipt to him had ability to convey to a purchaser in good faith for value and also such title to the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchase in good faith and for value;
- (b) the direct obligation of the warehouse operator to hold possession of the goods for him or her according to the terms of the receipt as fully as if the warehouse operator had contracted directly with him; and
- (c) all rights accruing under the law of agency, estoppel, including right to good delivery to the warehouse operator after the warehouse receipt was delivered.

41. Rights and obligations of transferors and transferees of negotiable warehouse receipts

(1) The transferee of a negotiable warehouse receipt for value and in good faith shall have the right to compel the transferor of such receipt to endorse the receipt.

(2) A warehouse receipt shall not be regarded as negotiated until the transferor endorses it.

(3) The endorsement of a warehouse receipt in good faith shall not make the transferee liable for any default or fraudulent acts on the receipt occasioned by the warehouse operator or previous endorsers.

42. Stay of execution on review

(1) The negotiation or transfer by endorsement or delivery, or assignment of a warehouse receipt for value shall be an adequate proof or warranty that the person who negotiates, transfers or assigns that warehouse receipt, does so because—

- (a) the receipt is genuine;
- (b) has legal right to negotiate, transfer or assign it;
- (c) knows no fact which would impair the validity or worth of the receipt; and
- (d) has the right to transfer the title to the goods.

(2) If the contract of the parties is in respect of the transfer of goods to which such warehouse receipt is involved, the fact that the goods are merchantable or fit for that particular purpose, would have been implied.

(3) Warranty shall not be implied in cases where a creditor of the transferor demands in good faith or receives payment of the debt for which such receipt is security.

PART VII – PENAL PROVISIONS**43. Issuing of fraudulent warehouse receipts**

A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding ten million Kenya shillings, or to both.

44. Issuing of receipts with false information

A warehouse operator, or any officer, agent, or employee of a warehouse operator, who fraudulently issues or knowingly facilitates the fraudulent issuing of

a receipt for goods based on a false statement or a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to a term of imprisonment not exceeding ten years, or to both.

45. Unlawful issuing of duplicate Receipts

A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word "Replacement", commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings or a term of imprisonment not exceeding ten years, or to both.

46. Depositing goods without proper title

A person who deposits goods whose title belongs to another party in a warehouse registered or licensed under this Act without the approval of the owner, commits an offence and is liable on conviction, to a term of imprisonment not exceeding fourteen years.

47. Obstruction

A person who obstructs the inspection of a registered or licensed warehouse in contravention of this Act or any other law, commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or to both.

48. General penalty

A person convicted of an offence under this Act for which no other penalty is specified is liable to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

PART VIII – MISCELLANEOUS PROVISION

49. Regulations

(1) The Cabinet Secretary, in consultation with the Council, may make Regulations for the carrying into effect the intent and purposes of this Act.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), the Cabinet Secretary shall make Regulations—

- (a) on insurance policy required under this Act;
- (b) for the procedure for appealing to the Council or the Appeal Committee;
- (c) for the qualifications and appointment of officers undertaking inspection of warehouses registered or licensed under this Act; and
- (d) on the form of warehouse receipts, whether negotiable or non-negotiable.

(3) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;

- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

50. Consultation

The Cabinet Secretary may, in carrying out the functions under this Act, consult the Cabinet Secretary responsible for matters related to trade.

SCHEDULE

[s. 7(1)]

PROVISIONS FOR THE MEETINGS AND PROCEDURE OF THE COUNCIL

1. Meetings

- (1) The Council shall meet at the Council's registered offices or any other designated venue and the meetings shall be convened by the chairperson.
- (2) The Council shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
- (3) Unless two thirds of the members otherwise agree, at least fourteen days' notice in writing of a meeting shall be given to every member.
- (4) A meeting shall be presided over by the chairperson or in the absence of the chairperson, the members present shall appoint one of their members to preside at the meeting.
- (5) The chairperson shall, on the written application of two-thirds of members, convene a special meeting of the Council.
- (6) The Council may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Council.

2. Quorum

- (1) Subject to subparagraph (2), the quorum of the meeting shall be two thirds of the members.
- (2) Where there is a vacancy in the Council, the quorum of the meeting shall not be less than five members.
- (3) A decision of the Council shall not be invalid by reason only of a vacancy among the members thereof.

3. Conflict of interest

- (1) If a person has a personal or fiduciary interest in any matter before the Council, and is present at a meeting of the Council or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Warehouse Receipt System

- (3) No member or staff of the Council shall transact any business or trade with the Council.

4. Voting

A question before the Council shall be decided by a majority of the members and the Chairperson shall have a casting vote.

5. Rules of procedure and minutes

The Council shall—

- (a) determine rules of procedure for the conduct of its business; and
 - (b) keep minutes of its proceedings and decisions.
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