

**THE WAREHOUSE RECEIPT SYSTEM BILL, 2015**

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**THE WAREHOUSE RECEIPT SYSTEM BILL, 2015**

**A Bill for**

**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**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Warehouse Receipt <sup>Short title and commencement.</sup> System Act, 2015.

2. In this Act, unless the context otherwise requires— <sup>Interpretation.</sup>

“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 26;

“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;

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

“holder” means the payee or endorsee of a warehouse receipt who is in possession of the receipt;

“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;

“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 storing goods for hire and the 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;

“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 receipts as a document of title and includes but not limited to, the regulation of warehouses and actors associated in the processes.

## **PART II—ESTABLISHMENT OF THE WAREHOUSE RECEIPT SYSTEM COUNCIL**

**3.** (1) There is established a Council to be known as <sup>Establishment of the</sup> the Warehouse Receipt System Council. <sub>Warehouse Receipt  
Systems Council.</sub>

(2) The Council shall be a body corporate, with perpetual succession and a common seal, and which 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) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
  - (b) the Principal Secretary for the time being responsible for matters related to finance or a representative;
  - (c) one person nominated by the Council of Governors;
  - (d) the Director-General of Agriculture, Food and Fisheries Authority or a representative;
  - (e) the chief executive officer of the Council;
  - (f) one person nominated by Financial Sectors Regulators Forum;
  - (g) one person nominated by the Kenya Farmers Association;
  - (h) one person nominated by Kenyan members of the East African Grain Council; and
  - (i) one person nominated by Consumer Federation of Kenya.
- (4) A person appointed as a member of the Council by the Cabinet Secretary under subsection (a) to (i) 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) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.

(6) The Chairperson and Vice-Chairperson shall be of the opposite gender.

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

(8) The chairperson and members of the Council appointed under subsection (3) (e) to (i) 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.

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

- (a) by resignation by letter addressed to the Cabinet Secretary;
- (b) on the written recommendation of the body which he represents revoking the nomination of the member;
- (c) for gross misconduct or abuse of office;
- (d) if he is absent, without permission of the chairperson of the Council, from three successive meetings of the Council of which he has received notice;
- (e) if in the opinion of the Council, he becomes by reason of mental or physical infirmity incapable of performing his duties as a member of the Council;
- (f) adjudication or admission of bankruptcy; or
- (g) conviction for an offence involving moral turpitude or corruption.

**4. The Council shall—**

Functions of the Council.

- (a) facilitate the establishment, maintenance and development of the Warehouse Receipt System for agricultural commodities in Kenya;
- (b) oversee the functioning of the Warehouse Receipt System to ensure the efficiency, effectiveness and integrity of the system;

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- (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) may issue, suspend or revoke registration or licenses issued under the Act;
  - (i) may suspend operations of warehouse operators, inspectors, weighters or graders operating under the Act, for failure to comply with any provision of this Act;
  - (j) prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;
  - (k) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties under the Act;
  - (l) advise the Cabinet Secretary on matters relating to agricultural commodity trade and warehousing; and
  - (m) 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. The Council shall have all the powers necessary for<sup>Powers of the Council.</sup> 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.

6. (1) The business and affairs of the Council shall be<sup>Conduct of the affairs of the Council.</sup> as provided in the Schedule.

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

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

8. (1) There shall be a chief executive officer of the <sup>Chief Executive Officer.</sup> 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 such person—

- (a) holds a university degree from a recognized university 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 five 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 of and condition of 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; or
  - (iv) adjudged or admits in writing to being bankrupt; or
  - (v) conducts himself in a manner deemed to be inconsistent with this Act.

9. The Board shall employ such other staff of the <sup>Staff of the Council.</sup> Council as the Board may consider necessary for the proper and efficient discharge of the functions of the Council

under the Act, on such terms and conditions of service as the Council may, determine.

**10.** The Council may engage the services of <sup>Consultants and experts.</sup> consultants or experts as it considers appropriate to assist in the discharge of its functions under his Act.

**11.** The funds of the Council shall consist of— <sup>Funds of the Council.</sup>

- (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.

**12.** The financial year of the Council shall be the <sup>Financial year.</sup> period of twelve months ending on the thirtieth June in each year.

**13.** The annual estimates of the Council shall be <sup>Annual estimates. No. 18 of 2012</sup> prepared in accordance with the Public Finance Management Act, 2012.

**14.** (1) The Council shall cause to be kept all proper <sup>Accounts and audit.</sup> 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 <sup>No. 12 of 2003. No. 18 of 2012.</sup> audited in accordance with the Public Audit Act, 2003 and the Public Finance Management Act, 2012.

**15.** (1) The chief executive officer shall, cause to be <sup>Reports.</sup> 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 a report, transmit it to the National Assembly.

### **PART III— REGISTRATION, LICENSING AND INSPECTION OF WAREHOUSES**

**16.** (1) A warehouse operator shall apply to the Council for a licence to operate within the Warehouse Receipt System. Licensing of warehouse operators.

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

(3) The Council may grant or refuse to grant a licence to an applicant and may issue a licence subject to such conditions, as it may consider necessary.

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

**17.** (1) The Council may suspend or revoke a licence— Revocation of licence and suspension of licence or operations.

- (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 Council shall before revoking or suspending a licence, inform the licensee of the intended revocation or suspension, in writing, and give the licensee and opportunity to make representations before it.

(3) Upon the revocation of a licence, the Council 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 Council.

(4) A licensee who, without reasonable cause, fails to surrender a licence within the period specified in paragraph (3) commits an offence.

(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 license has been suspended or revoked, the Council shall appoint an independent warehouse manager to operate the warehouse in the interim until the matter is resolved.

(7) 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.

(8) 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.

**18.** The Council may charge fees for initial warehouse<sup>Fees.</sup> inspection and issue of warehouse operator's licence.

**19.** (1) There is established a Warehouse Receipts<sup>Warehouse Receipts</sup> Appeals Committee<sup>Appeals Committee.</sup> 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) any other decision of the Council under this Act.

(2) The Warehouse Receipts Appeals Committee shall consist of—

- (a) the Chairperson of the Council; and

(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication.

(3) The term of office of the Warehouse Receipts Appeals 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 Appeals 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 Appeals Committee.

**20.** (1) A licensed warehouse operator shall ensure that the agricultural commodities stored in a licensed warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with the Weights and Measures Act. <sup>Grading and weighing of agricultural products.</sup> <sup>Cap. 513</sup>

(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a recognized competent Authority.

**21.** The chief executive officer or authorized officers of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary. <sup>Inspection of stored products.</sup>

**22.** The chief executive officer may, from time to time publish the results of any inspection made under the Act, <sup>Publication of general inspections.</sup>

including the names and locations of the licensed warehouses inspected and the names of the operators licensed under this Act.

**23.** The chief executive officer may, through <sup>Examination of books and records of licensed warehouses and warehouse operators.</sup> authorized officers, employees or agents examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehouse operators working in such warehouses.

**24.** The Cabinet Secretary may, in consultation with <sup>Regulations.</sup> the Council, make regulations generally for the better carrying into effect of the provisions of this Part.

#### **PART IV—WAREHOUSE RECEIPTS**

**25.** (1) A warehouse operator shall issue a warehouse <sup>Warehouse receipts.</sup> 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.

**26.** (1) There is established a Central Registry which<sup>Establishment of central registry.</sup> shall be operated by the Council.

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

(3) 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.

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

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

**27.** (1) Any loss, theft or destruction of the warehouse<sup>Replacement of receipts.</sup> 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 receipt for a lost, stolen or destroyed, 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 duplicate for a warehouse receipt that is lost, stolen or destroyed.

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

**28.** A duplicate receipt issued under section 27 shall<sup>Warranty and standing of duplicate receipts.</sup> 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**

**29.** (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. Obligation of warehouse operator to deliver.

(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.

**30.** Where a warehouse operator delivers agricultural commodities in a warehouse to a person who is not lawfully entitled to the possession, the warehouse operator shall be liable for loss. Wrongful release of goods.

**31.** (1) A warehouse operator may commingle agricultural commodities of the same type and grade. Separation of goods and fungible goods.

(2) A warehouse operator shall be 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.

**32.** (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. Attachment or levy upon goods for which negotiable receipt has been issued.

(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.

**33.** (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. Warehouse operator's lien.

(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) such 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**

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

**35.** A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 35 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.

**36.** 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 direct 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.

**37.** (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 in a case where endorsement is essential for negotiation.

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

(2) In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that 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.

**38.**(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—

Warranties on negotiation of the warehouse receipt.

- (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

**39.** 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

Issuing of fraudulent warehouse receipts.

the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or a fine not exceeding one million shillings, or to both.

**40.** A warehouse operator, or any officer, agent, or <sup>Issuing of receipts with false information.</sup> 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 a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or both.

**41.** A warehouse operator or any officer, agent, or <sup>Unlawful issuing of duplicate Receipts.</sup> 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 “Duplicate”, commits an offence and is liable on conviction to a fine not exceeding one million shillings or a term of imprisonment not exceeding five years, or both.

**42.** A person convicted of an offence under this Act <sup>General penalty.</sup> for which no other penalty is specified shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

### **PART VIII—MISCELLANEOUS PROVISION**

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

(2) 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 and the Statutory Instruments Act.

**SCHEDULE (s. 6)**

**PROVISIONS FOR THE MEETINGS AND  
PROCEDURE OF THE COUNCIL**

1. (1) The Council shall meet at the Council's<sup>Meetings.</sup> 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, by the vice-chairperson of the Council or in the absence of both the chairperson and the vice chairperson the members present shall appoint one of their number 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. (1) Subject to subparagraph (2), the quorum of the<sup>Quorum.</sup> 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 three members.

(3) A decision of the Council shall not be invalid by reason only of a vacancy among the members thereof.

3. (1) If a person has a personal or fiduciary interest in<sup>Conflict of interest.</sup> 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.

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

4. A question before the Council shall be decided by a <sup>Voting</sup> majority of the members and the Chairperson shall have a casting vote.

5. The Council shall—

Rules of procedure and minutes.

(a) determine rules of procedure for the conduct of its business; and

(b) keep minutes of its proceedings and decisions.

## MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities to address marketing challenges associated with cereals and grain subsectors in Kenya.

**Part I (Clauses 1-2)** contains preliminary provisions.

**Part II (Clauses 3-16)** provides for the establishment of the Warehouse Receipt System Council as a body corporate, the membership, the objects and functions of the Council, the powers of the Council, the Chief Executive Officer, Corporation Secretary and Staff of the Council, the funds of the Council and the manner of reporting on the operations of the Council.

**Part III (Clauses 17-25)** provides for the licensing and inspection of warehouses, for the application for a licence to operate within the Warehouse Receipts System, the revocation and suspension of the licence.

Clause 20 provides for the establishment of a Warehouse Receipts Appeals Committee and matters that the Committee may determine and confers powers on the Cabinet Secretary to make regulations on the structure and operation of the Committee.

Clause 21 provides for the grading of agricultural commodities by certified agricultural commodities graders and weighing of agricultural products using equipment calibrated in accordance with the Weights and Measures Act.

Clause 22-24 provides for the inspection of stored products by authorized officers of the Council, the publication of inspection results and the examination of books and records of licensed warehouses and the warehouse operators working the warehouses.

**Part IV (Clauses 26-29)** provides for the issuance of a warehouse receipt for agricultural produce deposited in a warehouse, the establishment of a Central Registry operated by the Council for the purpose of registering transactions relating to a warehouse receipt issued, the replacement of lost, stolen or destroyed receipts and the status of the duplicate receipts issued.

**Part V (Clauses 30-35)** provides for the rights and obligations of the warehouse operator on their rights including the liability for loss of goods to persons not lawfully entitled to the goods and the operator's lien over good covered by a warehouse receipt or proceeds of the goods for lawful charges in the storage contract.

**Part VI (Clauses 36-40)** provides for the negotiation and transfer of receipts, negotiation by endorsement and delivery, the rights acquired by

negotiation of warehouse receipts, rights and obligations of transferors and transferees of negotiable warehouse receipts and warranties on negotiations of the warehouse receipts.

**Part VII (Clauses 41-44)** contains miscellaneous provisions.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms.

**Statement that the Bill concerns county governments**

The Bill may concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule. The Bill contains provisions related to trade regulation and licencing.

**Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the annual estimates.

ADEN DUALE,  
*Leader of Majority.*



I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 31<sup>st</sup> August, 2016.

*Clerk of the National Assembly*

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

*Speaker of the National Assembly*