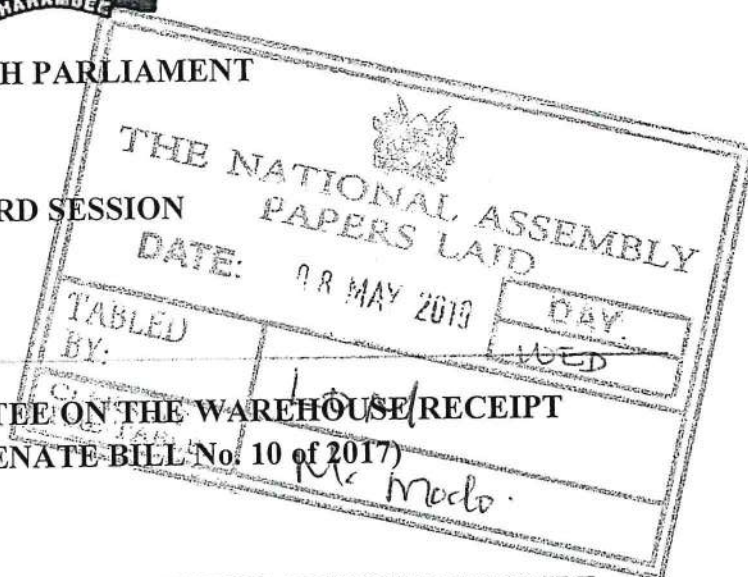


REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THIRD SESSION



THE MEDIATION COMMITTEE ON THE WAREHOUSE RECEIPT
SYSTEM BILL, (SENATE BILL No. 10 of 2017)

REPORT ON THE CONSIDERATION OF THE WAREHOUSE RECEIPT
SYSTEM BILL, (SENATE BILL No. 10 of 2017)

Joint Clerk's Chambers
Parliament Buildings,
NAIROBI.

MAY, 2019

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PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Mediation Committee on the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017) was constituted by the Speaker of the National Assembly pursuant to Article 113 of the Constitution and standing order 146 of the National Assembly Standing Orders and by the Speaker of the Senate pursuant to standing order 160 of the Senate Standing Orders on 28th March, 2019.

Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya, National Assembly Standing Order 146 and Senate Standing Order 160(1). The Committee was established to negotiate a version of the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017) that both Houses will pass.

Membership of the Committee

The Committee is comprised of the following Members-

- | | | |
|---------------------------------------|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Hon. Aden Duale, EGH, MP | - | Vice-Chairperson |
| 3. Hon. Adan Ali Haji, MP | - | Member |
| 4. Hon. (Dr.) John Mutunga, MP | - | Member |
| 5. Hon. Ferdinand Wanyonyi, MP | - | Member |
| 6. Sen. Naomi Jillo Waqo, MP | - | Member |
| 7. Sen. (Dr.) Ochilo Ayacko, MP | - | Member |
| 8. Hon. Robert Mbui, MP | - | Member |
| 9. Sen. (Dr.) Christopher Lang'at, MP | - | Member |
| 10. Sen. (Dr.) Agnes Zani, MP | - | Member |

Secretariat of the Committee

The Committee secretariat is comprised of –

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Mr. Ahmad Kadhi | - | Clerk Assistant I (National Assembly) |
| 2. Ms. Jemimah Waigwa | - | Legal Counsel I (National Assembly) |

- | | | |
|------------------------|---|---------------------------------------|
| 3. Mr. Salem Lorot | - | Legal Counsel II (National Assembly) |
| 4. Ms. Sombe Toona | - | Legal Counsel II (Senate) |
| 5. Mr. Mitchell Otoro | - | Legal Counsel II (Senate) |
| 6. Ms. Carol Kirorei | - | Clerk Assistant III (Senate) |
| 7. Mr. David Ng'eno | - | Research Officer III (Joint Services) |
| 8. Mr. Philemon Okinda | - | Serjeant-At-Arms (Senate) |
| 9. Ms. Maureen Kweyu | - | Audio Officer (Joint Services) |

Committee Sitzings

The Committee held its first meeting on 30th April, 2019 and elected Sen. Njeru Ndwiga, EGH, MP and Hon. Aden Duale, EGH, MP as Chairperson and Vice-Chairperson respectively. The Committee thereafter considered the provisions of the Bill.

The Committee resolved to adopt all clauses that were fully adopted by the Senate Committee on Agriculture, Livestock and Fisheries in their report tabled before the Senate on 14th March, 2019. These were clauses 2 (definition of terms "holder" and "warehouse receipt system"), 4(a), 11, 17, 21(5), 23(a), (c) and (d), 24, 27, 31, 32, 39, 41, 43, 44, 45, 48 and the Schedule.

The Clauses in contention were clauses 2 (on the definition of "owner", "warehouse operator" and "inspector"), 3(3) (5) (9), 4 (ja) and (jb), 9, 10, 16, 21(4) and (8), 23(b), 25, 30 and 50.

The Committee held its final meeting on 7th May, 2019 to adopt its report.

Adoption of the Report

We the Members of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017) have adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached schedule. (Appendix II)

Acknowledgment

The Committee thanks the Offices of the Speakers and the Offices of the Clerks of both Houses of Parliament for the necessary support extended to it in the execution of its mandate.

The Chairperson and vice-chairperson thank all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process resulting in agreement and arrival at an agreed version of the Bill.

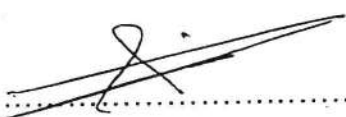
Mr. Speaker Sir,

It is our pleasant duty, pursuant to standing order 150(1) of the National Assembly Standing Orders and standing order 161(1) of the Senate Standing Orders to present a report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017) for consideration by both Houses of Parliament.

Signed.......... Date...7/5/19.....

SEN. PETER NJERU NDWIGA, EGH, M.P.

CHAIRPERSON

Signed.......... Date...7/5/19.....

HON. ADEN DUALE, EGH, M.P.

VICE - CHAIRPERSON

CHAPTER 1 INTRODUCTION

1.1 Background on the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017)

The Warehouse Receipt System Bill (Senate Bills No. 10 of 2017) seeks to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities and for this purpose, to provide for the establishment of a Warehouse Receipt System Council to oversight and regulate the implementation of the warehouse receipt system. The Bill further sets out the process of depositing commodities, issuance and transfer of receipt to regulation of activities involving agricultural produce. It also provides for the establishment of the Council and the Warehouse Receipts Appeals Committee which make up the warehouse receipt system.

The Warehouse Receipts System Bill (Senate Bill No. 10 of 2017) was published on 10th November, 2017 and read a First Time in the Senate on 30th November, 2017. It was read the Second Time on 21st and 22nd February 2018 and 7th March 2018 and was passed. The Bill was considered and passed by the Senate on 29th March, 2018 and was thereafter sent to the National Assembly for concurrence.

The Bill was read a First Time in the National Assembly on 19th April 2018. Second Reading of the Bill in the National Assembly was done on 23rd October 2018 and 24th October 2018. The Bill came for the Committee of the whole House in the National Assembly on 22nd and 27th November 2018. The Bill was read the Third Time on 27th November 2018 and was passed by the National Assembly with amendments. It was then forwarded back to the Senate for consideration on 20th December 2018.

The Senate considered the amendments forwarded by the National Assembly and rejected them on 14th March, 2019. Consequently, pursuant to Article 113 of the Constitution, standing order 146 of the National Assembly Standing Orders and standing order 160 (1) of the Senate Standing Orders, the Bill was referred to a Mediation Committee with the sole objective of negotiating an agreed version of the Bill that would be presented to both Houses for approval.

CHAPTER 2

CONSIDERATION OF THE WAREHOUSE RECEIPT SYSTEM BILL (SENATE BILLS NO. 10 OF 2017)

2.1 Amendments passed by the National Assembly to the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017)

The National Assembly passed the following amendments to the Bill-

CLAUSE 2

Clause 2 of the Bill amended—

- (a) in the definition of “holder” by deleting the words “who is in possession of the receipt” appearing immediately after the words “warehouse receipts”;
- (b) by deleting the definition of “owner”;
- (c) by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition—

“warehouse operator” means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts;

- (d) in the definition of the term “warehouse receipt system” by deleting the word “receipts” appearing immediately after the words “the management of the transfer of the” and substituting therefor the term “receipt”; and

- (e) by inserting the following new definition in its proper alphabetical sequence—

“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.

CLAUSE 3

Clause 3 of the Bill amended—

- (a) by deleting subclause (3) and substituting therefor the following new subclause—

(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;
- (e) the Director-General of Agriculture and Food 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 Kenya Farmers Association;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the Kenya Warehouse Operators Association."

(b) by deleting subclause (5) and substituting thereof with the following subclause—

(5) A person shall be qualified for appointment as chairperson of the Board if such a person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
- (c) holds relevant academic and professional qualifications including a university degree in a relevant field; and
- (d) has at least eight years' experience in—

- i. agriculture;
- ii. finance;
- iii. business;
- iv. law;
- v. procurement; or
- vi. administration.

(c) in subclause (9), by—

(i) inserting the words, "in contravention of the Public Officer Ethics Act and any other relevant law" immediately after the word "office" in paragraph (c);

(ii) deleting the words "in the opinion of the Council" appearing in paragraph (e);

(iii) deleting paragraph (g) and substituting therefor with the following paragraph—

"(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine."

CLAUSE 4

Clause 4 of the Bill amended—

(a) in paragraph (a) by inserting the word "produced" immediately after the word "commodities";

(b) by inserting the following new paragraphs immediately after paragraph (j)—

(ja) in accordance with the provision of this Act, suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act for contravention of the Act;

(jb) issue, suspend or revoke registration or licenses issued under the Act.

CLAUSE 9

Clause 9 of the Bill amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) holds a relevant university degree from a recognized university in Kenya.”

CLAUSE 10

Clause 10 of the Bill amended by inserting the words “a company secretary and” immediately after word “employ”.

CLAUSE 11

Clause 11 of the Bill amended—

(a) by renumbering the existing clause as subclause (1);

(b) by inserting the following new subclause immediately after subclause (1) —

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

CLAUSE 16

Clause 16 of the Bill amended in subclause (5) by inserting the word “annual” immediately before the word “report”.

CLAUSE 17

Clause 17 of the Bill amended—

(a) by deleting subclause (3) and substituting therefore the following new clause—

“(3) The County Executive Committee member may—

(a) issue a license where the applicant meets all the requirements set out in the prescribed regulations;

(b) decline to issue a license for the conduct 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 conduct such warehouse in accordance with this Act and the regulations made hereunder; or
- (iii) there is any other sufficient reason within the purposes of Act for not issuing such licenses.

(b) by inserting the following new subclause immediately after subclause (4) —

(4A) A person who operates a warehouse under the Warehouse Receipts System without a license issued by the county executive committee commits an offence.

CLAUSE 21

Clause 21 of the Bill amended—

- (a) in subclause (4) by inserting the words “and shall be liable on conviction to a fine not exceeding a hundred thousand shillings or imprisonment for a term not exceeding three years, or both” immediately after the word “offence”;
- (b) in subclause (5)—
 - (i) by deleting the word “or” appearing immediately before the word “graders”;
 - (ii) by inserting the words “or other service providers” immediately after the word “graders”; and
- (c) by inserting the following new subclause immediately after subclause (8) —

“(8A) The Council shall maintain a database which shall be available for inspection by any person upon application pursuant to Article 35 of the Constitution.”

CLAUSE 23

Clause 23 the Bill amended—

- (a) by deleting the words “Warehouse Receipts Appeals Committee” wherever they appear and substituting therefor the words “Warehouse Receipts System Dispute Resolution Committee”;
- (b) in subclause (1) by inserting the following new paragraph immediately after paragraph (d) —
 - (da) complaints by registered, licensed or other persons operating under this Act;
- (c) in subclause (2) by—

- (i) deleting paragraph (a) and substituting thereof with the following paragraph—

(a) a chairperson appointed by the Cabinet Secretary who shall be an advocate of not less than seven years standing and with experience in dispute resolution; and

- (ii) deleting the word “ adjudication” in paragraph (b) and substituting thereof with the word “resolution”.

(d) in subclause (4) by deleting the words “Appeals Committee” and substituting therefor the words “Dispute Resolution Committee”.

CLAUSE 24

Clause 24 of the Bill deleted and substituted thereof with the following new clause—

Grading and weighing of agricultural products. **24.** (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 related 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 provide guidelines on the minimum qualifications and competencies required of graders and weighers.

CLAUSE 25

Clause 25 of the Bill deleted and substituted thereof with the following new clause—

Inspection of stored products. 25.(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 its considered necessary.

(2) The Council shall appoint and gazette inspectors who shall exercise such powers in accordance with regulations made under this Act.

CLAUSE 27

Clause 27 of the Bill amended by inserting the words, "insurance contracts, professional indemnities, warehouse receipts registry" immediately after the words "examine all".

CLAUSE 30

Clause 30 of the Bill amended by inserting the following new subclause immediately after subclause (1)—

"(1A) The Central Registry shall have the necessary infrastructure to link it with a central depository of a commodities exchange licensed by the Capital Markets Authority."

CLAUSE 31

Clause 31 of the Bill amended in—

- (a) subclause (2), by deleting the words "issue a warehouse receipt" and substitute thereof with the words, " issue a warehouse replacement receipt";
- (b) subclause (3) by deleting the word " duplicate" and substituting thereof with the word "replacement"; and
- (c) subclause (4), by deleting the word "deals" immediately after the word "person" and substituting therefor the word "who".

CLAUSE 32

Clause 32 of the Bill amended by deleting the word "duplicate" and substituting with the word "replacement".

CLAUSE 39

Clause 39 of the Bill amended by deleting the phrase "section 35" and substituting therefor with the phrase "section 38".

CLAUSE 41

Clause 41 of the Bill amended—

- (a) by deleting the words “in a case where endorsement is essential for negotiation” appearing in subclause (1);
- (b) in subclause (2) by deleting the words “In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting therefor the word “A” .

CLAUSE 43

Clause 43 of the Bill deleted and substituted thereof with the following new clause—

Issuing of fraudulent warehouse receipts.	43. 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.
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CLAUSE 44

Clause 44 of the Bill deleted and substituted thereof with the following new clause—

Issuing of receipts with false information.	44. 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 a fine not exceeding ten million Kenya shillings or to a term of imprisonment not exceeding ten years, or both.
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CLAUSE 45

Clause 45 of the Bill deleted and substituted thereof with the following new clause—

Unlawful 45. A warehouse operator or any officer, agent, or employee of
issuing of a warehouse operator, who issues or facilitates the issuing of a
duplicate duplicate or additional negotiable receipt for goods knowing that
receipts. 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 Kenya shillings or a term of imprisonment not exceeding
ten years, or both.

CLAUSE 48

Clause 48 of the Bill amended by deleting the word "one" and substituting therefor the word "three".

CLAUSE 50

Clause 50 of the Bill amended by deleting the word "shall" and substituting therefor the word "may".

SCHEDULE

The Schedule to the Bill amended-

(a) in paragraph 1 by deleting subparagraph (4) and substituting therefor the following new subparagraph—

(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.

(b) in paragraph (2) by deleting the word "three" in sub-paragraph (2) and substituting thereof with the word "five".

2.2 Senate Comments on the National Assembly amendments

The Senate Standing Committee on Agriculture, Livestock and Fisheries considered the amendments passed by the National Assembly and rejected some amendments, agreed to others and agreed to some with further amendments. Pursuant to standing order 159 of the Senate Standing Orders recommended that the Senate rejects the amendments.

The Senate rejected the amendments on 14th March, 2019. Below is a summary of the Senate's consideration of the National Assembly amendments to the Bill-

CLAUSE 2

Clause of the Bill amended—

(a) in the definition of “holder” by deleting the words “who is in possession of the receipt” appearing immediately after the words “warehouse receipts”;

Resolution: Agreed to.

(b) by deleting the definition of “owner”;

Resolution: Not agreed to.

(c) by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition— “warehouse operator’ means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts;

Resolution: Not agreed to.

(d) in the definition of the term “warehouse receipt system” by deleting the word “receipts” appearing immediately after the words “the management of the transfer of the” and substituting therefor the term “receipt”;

Resolution: Agreed to.

(e) by inserting the following new definition in its proper alphabetical sequence— “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.

Resolution: Agreed to with amendments to read as follows:

“inspector” means an authorized officer appointed by the Council or a county government in the gazette, to carry out inspections under this Act.

CLAUSE 3

Clause 3 of the Bill amended—

(a) by deleting sub clause (3) and substituting therefor the following new sub clause—

(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;
- (e) the Director-General of Agriculture and Food 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 Kenya Farmers Association;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the Kenya Warehouse Operators Association.”

Resolution: Agreed to with amendments to read as follows:

(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) two persons nominated by the Council of Governors;
- (e) the Director-General of Agriculture and Food 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;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the umbrella body representing warehouse operators in Kenya."

(b) by deleting sub clause (5) and substituting thereof with the following sub clause—

- (5) A person shall be qualified for appointment as chairperson of the Board if such a person—
 - (a) is a citizen of Kenya;
 - (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;

(c) holds relevant academic and professional qualifications including a university degree in a relevant field; and

(d) has at least eight years' experience in—

(i) agriculture;

(ii) finance;

(iii) business;

(iv) law;

(v) procurement; or

(vi) administration.

Resolution: Agreed to with further amendment that:

Under subclause 5(c) the word “relevant” appearing after the word hold be deleted; and

Inserting a new paragraph to state as follows:

(c) by deleting sub clause (6);

(c) in subclause (9), by—

(i) inserting the words, “in contravention of the Public Officer Ethics Act and any other relevant law” immediately after the word “office” in paragraph (c);

(ii) deleting the words “in the opinion of the Council” appearing in paragraph (e);

(iii) deleting paragraph (g) and substituting therefor with the following paragraph—

“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”

Resolution: Agreed to with further amendment that:

Under subclause (9) the words “in the opinion of the Council” be replaced with “if it is determined by the Council”.

The clause must clearly state that the offence is related to corruption and chapter Six of the Constitution.

CLAUSE 4

Clause 4 of the Bill amended—

(a) in paragraph (a) by inserting the word “produced” immediately after the word “commodities”;

Resolution: Not agreed to. The Bill should be restricted to agricultural produce as intended.

(b) by inserting the following new paragraphs immediately after paragraph (j)—

(ja) in accordance with the provision of this Act, suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act for contravention of the Act;

(jb) issue, suspend or revoke registration or licenses issued under the Act;

Resolution: Not agreed to. The Bill addresses these under paragraph (h) and clause 21.

CLAUSE 9

Clause 9 of the Bill amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) holds a relevant university degree from a recognized university in Kenya.”

Resolution: Not agreed to.

CLAUSE 10

Clause 10 of the Bill amended by inserting the words “a company secretary and” immediately after word “employ”.

Resolution: Not agreed to as the Council is not a Company. The same may be amended to include a corporation secretary.

CLAUSE 11

Clause 11 of the Bill amended—

- (a) by renumbering the existing clause as subclause (1);
- (b) by inserting the following new subclause immediately after subclause (1) —

(2) The Council shall publish the names of persons engaged as experts under subsection (1), in the gazette.

Resolution: Agreed to.

CLAUSE 16

Clause 16 of the Bill amended in subclause

- (5) by inserting the word “annual” immediately before the word “report”.

Resolution: Agreed to. Further amendment be made to provide for the transmission of the report both the National Assembly and the Senate. This will address the issue of reports on matters affecting counties not being availed to the Senate.

CLAUSE 17

Clause 17 of the Bill amended—

- (a) by deleting subclause (3) and substituting therefore the following new clause—

“(3) The County Executive Committee member may—

(a) issue a license where the applicant meets all the requirements set out in the prescribed regulations;

(b) decline to issue a license for the conduct 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 conduct such warehouse in accordance with this Act and the regulations made hereunder; or

(iii) there is any other sufficient reason within the purposes of Act for not issuing such licenses.

(b) by inserting the following new subclause immediately after subclause (4) —

(4A) A person who operates a warehouse under the Warehouse Receipts System without a license issued by the county executive committee commits an offence.

Resolution: Agreed to. This brings more clarity on the issuance of licences by county governments.

CLAUSE 21

Clause 21 of the Bill amended—

(a) in subclause (4) by inserting the words “and shall be liable on conviction to a fine not exceeding a hundred thousand shillings or imprisonment for a term not exceeding three years, or both” immediately after the word “offence”;

Resolution: Agreed to with amendments to read as follows:

Paragraph (a) to be amended to have a penalty of a fine not exceeding one million shillings or imprisonment for a term not exceeding one years, or both.

(b) in subclause (5)— (i) by deleting the word “or” appearing immediately before the word “graders”; (ii) by inserting the words “or other service providers” immediately after the word “graders”;

Resolution: Agreed to.

(c) by inserting the following new subclause immediately after subclause (8) —

“(8A) The Council shall maintain a database which shall be availed for inspection by any person upon application pursuant to Article 35 of the Constitution.”

Resolution: Not agreed to. The provisions of the proposed 8A are already provided in clause 8, and it is not clear what the purpose of the database is.

CLAUSE 23

Clause 23 the Bill amended—

(a) by deleting the words “Warehouse Receipts Appeals Committee” wherever they appear and substituting therefor the words “Warehouse Receipts System Dispute Resolution Committee”;

(b) in subclause (1) by inserting the following new paragraph immediately after paragraph (d) — (da) complaints by registered, licensed or other persons operating under this Act;

(c) in subclause (2) by—

(i) deleting paragraph (a) and substituting thereof with the following paragraph—

(a) a chairperson appointed by the Cabinet Secretary who shall be an advocate of not less than seven years standing and with experience in dispute resolution;
and

(ii) deleting the word “adjudication” in paragraph (b) and substituting thereof with the word “resolution”.

(d) in subclause (4) by deleting the words “Appeals Committee” and substituting therefor the words “Dispute Resolution Committee”.

Resolution: Agreed to. Include a further amendment under subclause (2) immediately after paragraph (e) to read “any other decision of the Council and County Executive Committee Member under this Act.”

This is to provide for reprieve for those aggrieved by the decision of a Member or the Council.

CLAUSE 24

Clause 24 of the Bill deleted and substituted thereof with the following new clause—

Grading and weighing of agricultural products.

24. (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 related 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 provide guidelines on the minimum qualifications and competencies required of graders and weighers.

Resolution: Agreed to.

CLAUSE 25

Clause 25 of the Bill deleted and substituted thereof with the following new clause—

Inspection of stored products.

25.(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 its considered necessary.

(2) The Council shall appoint and gazette inspectors who shall exercise such powers in accordance with regulations made under this Act.

Resolution: Agreed to. To further include county governments in inspection of warehouses as the issuers of licences.

CLAUSE 27

Clause 27 of the Bill amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the words “examine all”.

Resolution: Agreed to.

CLAUSE 30

Clause 30 of the Bill amended by inserting the following new subclause immediately after subclause (1)—

“(1A) The Central Registry shall have the necessary infrastructure to link it with a central depository of a commodities exchange licensed by the Capital Markets Authority.”

Resolution: Agreed to. However, further amendment be done to give responsibility of implementation to someone specific, i.e. the CEO of the Council.

CLAUSE 31

Clause 31 of the Bill amended in—

(a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “issue a warehouse replacement receipt”;

(b) subclause (3) by deleting the word “duplicate” and substituting thereof with the word “replacement”; and

(c) subclause (4), by deleting the word “deals” immediately after the word “person” and substituting therefor the word “who”.

Resolution: Agreed to.

CLAUSE 32

Clause 32 of the Bill amended by deleting the word “duplicate” and substituting with the word “replacement”.

Resolution: Agreed to.

CLAUSE 39

Clause 39 of the Bill amended by deleting the phrase "section 35" and substituting therefor with the phrase "section 38".

Resolution: Agreed to.

CLAUSE 41

Clause 41 of the Bill amended—

(a) by deleting the words "in a case where endorsement is essential for negotiation" appearing in subclause (1);

(b) in subclause (2) by deleting the words "In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that" and substituting therefor the word "A".

Resolution: Agreed to.

CLAUSE 43

Clause 43 of the Bill deleted and substituted thereof with the following new clause—

Issuing of fraudulent warehouse receipts.

43. 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.

Resolution: Agreed to.

CLAUSE 44

Clause 44 of the Bill deleted and substituted thereof with the following new clause—

Issuing of receipts with false information.

44. 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 a fine not exceeding ten million Kenya shillings or to a term of imprisonment not exceeding ten years, or both.

Resolution: Agreed to.

CLAUSE 45

Clause 45 of the Bill deleted and substituted thereof with the following new clause—
Unlawful issuing of duplicate receipts.

45. 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 Kenya shillings or a term of imprisonment not exceeding ten years, or both.

Resolution: Agreed to.

CLAUSE 48

Clause 48 of the Bill amended by deleting the word “one” and substituting therefor the word “three”.

Resolution: Agreed to.

CLAUSE 50

Clause 50 of the Bill amended by deleting the word “shall” and substituting therefor the word “may”.

Resolution: Not agreed to. Consultation should not be optional.

SCHEDULE The Schedule to the Bm amended-

(a) in paragraph 1 by deleting subparagraph

(4) and substituting therefor the following new subparagraph— (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.

(b) in paragraph (2) by deleting the word “three” in sub-paragraph (2) and substituting thereof with the word “five”.

Resolution: Agreed to.

The Committee held two sittings on 30th April, 2019 and considered the provisions of the Warehouse Receipt System Bill, 2017. The following amendments to the Bill passed by the National Assembly were adopted by the Senate and were therefore not in contention:

Clauses 2 (definition of terms “holder” and “warehouse receipt system”), 4(a), 11, 17, 21(5), 23(a), (c) and (d), 24, 27, 31, 32, 39, 41, 43, 44, 45, 48 and the Schedule.

The Committee therefore resolved to adopt the National Assembly amendments not in contention.

The clauses in contention were **Clauses 2 (definition of the terms “owner”, warehouse operator” and “inspector”, 3(3),(5),(6),(9), 4(ja) and (jb), 9, 10, 16, 21 (4) and (8), 23(b), 25, 30 and 50.**

CLAUSE 2

THAT the clause 2 of the Bill be amended by deleting the definition of “owner”

Resolution: Agreed to retain the definition of “owner” as it is necessary.

THAT clause 2 of the Bill be amended by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition—

“warehouse operator” means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts;

Resolution: Agreed to retain the aspect of hiring out space as proposed by the National Assembly and also retain the Senate definition “regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse”.

This provides a more comprehensive definition and provides for the hiring out of space.

The paragraph will therefore read as follows:

“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;

THAT clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence—

“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.

Proposal was made by the Senate to include the role of county governments in inspection of warehouses.

Resolution: Not agreed to include the role of county governments to carry out inspections. The amendment of the National Assembly adopted.

CLAUSE 3

THAT Clause 3 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub clause—

(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;
- (e) the Director-General of Agriculture and Food 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 Kenya Farmers Association;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and

(j) one person nominated by the Kenya Warehouse Operators Association”

Senate proposal:

(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) two persons nominated by the Council of Governors;
- (e) the Director-General of Agriculture and Food 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;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the umbrella body representing warehouse operators in Kenya.”

Resolution: Agreed that one member shall represent the Council of Governors.

Rationale: This is to ensure that the Council membership is in line with the Mwongozo Guidelines requiring a maximum membership of nine (9).

It was further agreed to replace the “Kenya Farmers Association” with “an umbrella body representing farmers in Kenya”, “the Kenya Warehouse Operators Association” with “an umbrella body representing warehouse operators in Kenya” and the Kenya Bankers Association” with “an umbrella body representing bankers in Kenya”. Moreover, it was agreed that Cabinet Secretary shall determine which body represents the farmers/warehouse operators.

Rationale: The various associations are not statutory bodies and their membership is voluntary and subject to fluctuations. Therefore the use of the words “umbrella body representing farmers/ warehouse operators/ bankers in Kenya” will provide the necessary elasticity of the law to ensure that the representative appointed to the Board always has the blessing of the organization that represents most of the Kenyan farmers/ warehouse operators/bankers.

CLAUSE 3(5)

THAT Clause 3 of the Bill be amended by deleting sub-clause (5) and substituting thereof with the following sub-clause—

(5) A person shall be qualified for appointment as chairperson of the Board if such a person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
- (c) holds relevant academic and professional qualifications including a university degree in a relevant field; and
- (d) has at least eight years’ experience in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business;
 - (iv) law;
 - (v) procurement; or
 - (vi) administration.

Senate proposal

THAT the National Assembly amendment to sub clause 5 be retained and amended in paragraph (c) by deleting the word “relevant” appearing immediately after the word “hold”.

Further proposal to amend National Assembly's amendment to sub clause 5

(5) A person shall be qualified for appointment as chairperson of the Board if such a person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
- (c) holds a university degree in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business; or
 - (iv) procurement.
- (d) has eight years' experience in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business;
 - (iv) law;
 - (v) procurement; or
 - (vi) administration

Resolution: Agreed with the further amendment by the National Assembly and that a degree in business management be added to sub clause 5(c).

CLAUSE 3 (6)

THAT Clause 3 of the Bill be amended by deleting sub-clause (6).

Resolution: Agreed to.

Rationale: It is a consequential amendment due to the amendment to sub-clause (5).

CLAUSE 3(9)

THAT Clause 3 of the Bill be amended in sub-clause (9) by—

- (i) inserting the words, “in contravention of the Public Officer Ethics Act and any other relevant law” immediately after the word “office” in paragraph (c);
- (ii) deleting the words “in the opinion of the Council” appearing in paragraph (e);
- (iii) deleting paragraph (g) and substituting therefor with the following paragraph—

“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”

Senate proposal

THAT the National Assembly amendment to sub-clause 9 be retained and amended by deleting the proposed new paragraph (g) and substituting therefor the following new paragraph—

(g) upon conviction of an offence relating to corruption or chapter six of the Constitution and sentenced to a term exceeding six months imprisonment without an option of a fine.

b) deleting paragraph (e) and substituting it with the following new paragraph:

(e) if the Council determines that he is incapable of performing his duties by reason of mental or physical infirmity

Resolution: Agreed to the Senate proposal.

CLAUSE 4 (ja) and (jb)

THAT Clause 4 of the Bill be amended—

(a) in paragraph (a) by inserting the word “produced” immediately after the word “commodities”;

(b) by inserting the following new paragraphs immediately after paragraph (j)—

(ja) in accordance with the provision of this Act, suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act for contravention of the Act;

(jb) issue, suspend or revoke registration or licenses issued under the Act;

Resolution: Agree to delete.

Senate Proposal: That (ja) and (jb) be deleted.

Resolution: Agreed to delete sub clauses (ja) and (jb) and to retain the National Assembly amendment to clause 4(a).

Rationale: The Bill addresses the proposed paragraph (ja) under clause 21 (5) of the Bill. The Bill addresses the proposed paragraph (jb) under clause 4 (h) of the Bill.

CLAUSE 9

THAT Clause 9 of the Bill be amended in sub-clause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) holds a relevant university degree from a recognized university in Kenya.

Senate proposal: That the word “relevant” be deleted.

Resolution: Agreed to delete the word “relevant”.

CLAUSE 10

THAT Clause 10 of the Bill be amended by inserting the words “a company secretary and” immediately after word “employ”.

Senate proposal: That “company secretary” be replaced with “corporation secretary” as the Council is not a company.

Resolution: It was agreed that the company secretary be deleted and have the Bill only refer to “other staff”.

CLAUSE 16

THAT Clause 16 of the Bill be amended in in sub-clause (5) by inserting the word “annual” immediately before the word “report”.

Senate proposal: Further amendment be made to provide for the transmission of the report to "both Houses of Parliament". This will address the issue of reports on matters affecting counties not being availed to the Senate.

Resolution: Agreed to provide for the transmission of the report to "both Houses of Parliament". Agreed to both amendments.

CLAUSE 21(4)

THAT, Clause 21 of the Bill be amended in sub-clause (4) by inserting the words "and shall be liable on conviction to a fine not exceeding a hundred thousand shillings or imprisonment for a term not exceeding three years, or both" immediately after the word "offence";

Senate proposal:

The proposed prison term is onerous and the fine too lenient. The penalty should be amended to a fine not exceeding one million shillings or imprisonment for a term not exceeding one year, or both.

Resolution: Agreed to the Senate amendment.

THAT, Clause 21 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (8) —

"(8A) The Council shall maintain a database which shall be availed for inspection by any person upon application pursuant to Article 35 of the Constitution."

Resolution: Agreed that this be deleted as it can be provided for in the Regulations.

CLAUSE 23

Senate proposal:

THAT, Clause 23 of the Bill be further amended in sub clause (1) by inserting the words "or the county executive committee member" immediately after the word "of the Council" appearing in paragraph (e)

Rationale:

This is to provide for reprieve for those aggrieved by the decision of a county executive committee member.

Resolution: Agreed to.

CLAUSE 25

THAT Clause 25 of the Bill be deleted and substituted therefor with the following new clauses—

Inspection of stored products of 25.(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 its considered necessary

(2) The Council shall appoint and gazette inspectors who shall exercise such powers in accordance with regulations made under this Act.

Rationale: As the entity mandated to issue, suspend or revoke licenses under this Bill county governments should have powers to inspect records and commodities stored in a licensed warehouse.

The Senate proposed to add counties as appointees and for them to employ inspectors.

Resolution: The Senate proposal was dropped and the National Assembly proposal adopted without amendments.

CLAUSE 30

THAT, clause 30 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1)—

(1A) The Central Registry shall have the necessary infrastructure to link it with a central depository of a commodities exchange licensed by the Capital Markets Authority.

further amendment by adding the word "system" immediately after the word "depository";

Senate proposal: That a new subclause 1B be added to read as follows:

(1B) The Chief Executive Officer shall ensure that the infrastructure under subclause (1A) is availed.

Rationale: To create clarity.

Resolution: Agreed to.

CLAUSE 50

THAT clause 50 of the Bill amended by deleting the word "shall" and substituting therefor the word "may".

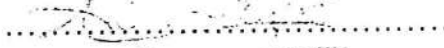

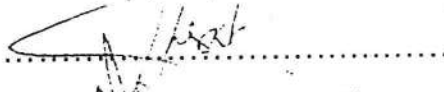
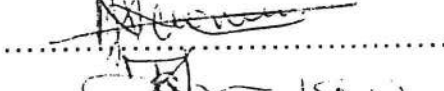
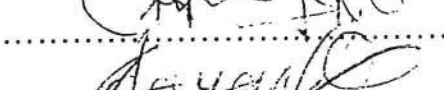
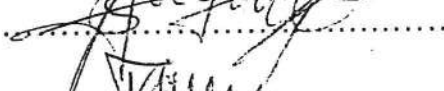
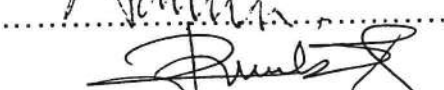
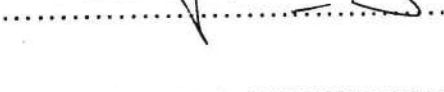


Resolution: Agreed to.

APPENDICES

APPENDIX I	Minutes of the Mediation Committee Deliberations
APPENDIX II	Schedule of Members' Adoption of the Report
APPENDIX III	Agreed version of the Bill

ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE
WAREHOUSE RECEIPT SYSTEM BILL (SENATE BILLS NO. 10 OF 2017)

We, the undersigned Members of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017), do hereby append our signatures to adopt the Report-

Sen. Njeru Ndwiga, EGH, MP	Chairperson	
Hon. Aden Duale, EGH, MP	Vice-Chairperson	
Hon. Adan Ali Haji, MP	Member	
Sen. (Canon) Naomi Waqo, MP	Member	
Hon. (Dr.) John Mutunga, MP	Member	
Sen. (Dr.) Ochilo Ayacko, MP	Member	
Hon. Ferdinand Wanyonyi, MP	Member	
Hon. Robert Mbui, MP	Member	
Sen. Christopher Lang'at, MP	Member	
Sen. Agnes Zani, MP	Member	

MINUTES OF THE MEETING OF THE COMMITTEE ON THE WAREHOUSE RECEIPT SYSTEM BILL (SERIALS PAGES NO. 10 OF 2017) HELD ON TUESDAY, 30TH APRIL, 2019 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING AT 5.00 P.M.

PRESENT

- | | | |
|-------------------------------------|---|--------|
| 1. Hon. Aden Duale, EGH, MP | - | Member |
| 2. Sen. Peter Njeru Ndwiga, EGH, MP | - | Member |
| 3. Hon. Adan Ali Haji, MP | - | Member |
| 4. Hon. (Dr.) John Mutunga, MP | - | Member |
| 5. Hon. Ferdinand Wanyonyi, MP | - | Member |
| 6. Sen. Naomi Jillo Waqo, MP | - | Member |
| 7. Sen. (Dr.) Ochilo Ayacko, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|--------|
| 1. Hon. Robert Mbui, MP | - | Member |
| 2. Sen. (Dr.) Christopher Lang'at, MP | - | Member |
| 3. Sen. (Dr.) Agnes Zani, MP | - | Member |

IN ATTENDANCE

- | | | |
|------------------------|---|---------------------------------------|
| 1. Mr. Ahmad Kadhi | - | Clerk Assistant I (National Assembly) |
| 2. Ms. Jemimah Waigwa | - | Legal Counsel I (National Assembly) |
| 3. Mr. Salem Lorot | - | Legal Counsel II (National Assembly) |
| 4. Ms. Sombe Toona | - | Legal Counsel II (Senate) |
| 5. Mr. Mitchell Otoro | - | Legal Counsel II (Senate) |
| 6. Ms. Carol Kirorei | - | Clerk Assistant III (Senate) |
| 7. Mr. David Ng'eno | - | Research Officer III (Joint Services) |
| 8. Mr. Philemon Okinda | - | Sergeant-At-Arms (Senate) |
| 9. Ms. Maureen Kweyu | - | Audio Officer (Joint Services) |

THE SECRETARIAT

MIN. NO. MED/WRS/01/2019

PRELIMINARIES

Hon. Aden Duale, EGH, MP called the meeting to order at 5.00 p.m. followed by a word of prayer by Sen. Naomi Waqo, MP.

Hon. Aden Duale, MP noted that the conclusion of the Warehouse Receipt System Bill, 2017 passage was crucial for the unlocking of resources by the National Treasury. He added that the essence of mediation was give and take and hoped for fruitful deliberations and swift conclusion of the mediation process.

MIN. NO. MED/WRS/02/2019 **ADOPTION OF THE AGENDA**

Members adopted the agenda of the meeting as presented after being proposed by Sen. Ochilo Ayacko, MP and seconded by Hon. Adan Ali Haji, MP.

MIN.NO. MED/WRS/03/2019 **ELECTION OF THE CHAIRPERSON**

Sen. Njeru Ndwiga, EGH, MP was nominated for the position of Chairperson of the Committee after he was proposed by Hon. Aden Duale, MP and seconded by Hon. Adan Ali Haji, MP.

There being no other nominee proposed for the position of Chairperson, Sen. Njeru Ndwiga, EGH, MP was declared the duly elected Chairperson of the Committee.

MIN.NO. MED/WRS/04/2019 **ELECTION OF THE VICE - CHAIRPERSON**

Hon. Aden Duale, MP was nominated for the position of Vice-Chairperson of the Committee after he was proposed by Sen. Ochilo Ayacko, MP and seconded by Sen. Njeru Ndwiga, EGH, MP.

There being no other nominee proposed for the position of Vice-Chairperson, Hon. Aden Duale, EGH, MP was declared the duly elected Vice-Chairperson of Committee.

MIN. NO. MED/WRS/05/2019 **DATE OF NEXT MEETING**

The next meeting will be held on Tuesday, 30th April, 2019 at 5.15 p.m.

MIN. NO. MED/WRS/06/2019

ADJOURNMENT

There being no other business, the sitting was adjourned at 5.10 p.m.

SIGNED:.....

SEN. NJERU NDWIGA, EGH, M.P.

(CHAIRPERSON)

DATE:.....

7-5-2019

SIGNED:.....

HON. ADEN DUALE, EGH, M.P.

(VICE-CHAIRPERSON)

DATE:.....

7-5-2019

THE WAREHOUSE RECEIPT SYSTEM BILL (SENATE BILL NO. 10 OF 2017) HELD ON TUESDAY, 30TH APRIL, 2019 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING AT 5.15 P.M.

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Hon. Aden Duale, EGH, MP | - | Vice-Chairperson |
| 3. Hon. Adan Ali Haji, MP | - | Member |
| 4. Hon. (Dr.) John Mutunga, MP | - | Member |
| 5. Hon. Ferdinand Wanyonyi, MP | - | Member |
| 6. Sen. Naomi Jillo Waqo, MP | - | Member |
| 7. Sen. (Dr.) Ochilo Ayacko, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|--------|
| 1. Hon. Robert Mbui, MP | - | Member |
| 2. Sen. (Dr.) Christopher Lang'at, MP | - | Member |
| 3. Sen. (Dr.) Agnes Zani, MP | - | Member |

IN ATTENDANCE

1. Mr. Ahmad Kadhi
2. Ms. Jemimah Waigwa
3. Mr. Salem Lorot
4. Ms. Sombe Toona
5. Mr. Mitchell Otoro
6. Ms. Carol Kirorei
7. Mr. David Ng'eno
8. Mr. Philemon Okinda
9. Ms. Maureen Kweyu

THE SECRETARIAT

- | | |
|---|---------------------------------------|
| - | Clerk Assistant I (National Assembly) |
| - | Legal Counsel I (National Assembly) |
| - | Legal Counsel II (National Assembly) |
| - | Legal Counsel II (Senate) |
| - | Legal Counsel II (Senate) |
| - | Clerk Assistant III (Senate) |
| - | Research Officer III (Joint Services) |
| - | Sergeant-At-Arms (Senate) |
| - | Audio Officer (Joint Services) |

MIN. NO. MED/WRS/07/2019

PRAYER

The Chairperson called the meeting to order at 5.15 p.m. followed by a word of prayer.

MIN. NO. MED/WRS/08/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Hon. Ferdinand Wanyonyi, MP and seconded by Sen. Naomi Waqo, MP.

MIN.NO. MED/WRS/09/2019

**CONSIDERATION OF WAREHOUSE
RECEIPT SYSTEM BILL, (SENATE BILLS
NO. 10 OF 2017**

The Chairperson informed the meeting that the Senate had considered the amendments passed by the National Assembly to the Warehouse Receipt System Bill, (Senate Bills No. 10 of 2017) and had agreed on a number of amendments proposed to the Bill. The Committee considered the various clauses to the Bill as summarized below:

1. **Clauses 2** (definition of terms “holder” and “warehouse receipt system”), **4(a), 11, 17, 21(5), 23(a), (c) and (d), 24, 27, 31, 32, 39, 41, 43, 44, 45, 48 and the Schedule.**

Resolution: The Senate adopted the National Assembly amendments to the listed clauses. These were therefore non-contentious.

2. **Clause 2**

THAT the clause 2 of the Bill be amended by deleting the definition of “owner”

Resolution: Agreed to retain the definition of “owner” as it is necessary.

THAT clause 2 of the Bill be amended by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition-

“warehouse operator” means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts;

Resolution: Agreed to retain the aspect of hiring out space as proposed by the National Assembly and also retain the Senate definition "regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse". This provides a more comprehensive definition and provides for the hiring out of space.

THAT clause 2 of the Bill be amended by inserting the following new definition in its proper alphabetical sequence—

"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.

Proposal was made by the Senate to include the role of county governments in inspection of warehouses.

Resolution: Not agreed to include the role of county governments to carry out inspections. The National Assembly amendment was adopted.

3. **Clause 3**

THAT Clause 3 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub clause—

(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;
- (e) the Director-General of Agriculture and Food 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 Kenya Farmers Association;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the Kenya Warehouse Operators Association."

Senate proposal:

(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) two persons nominated by the Council of Governors;
- (e) the Director-General of Agriculture and Food 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;
- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the umbrella body representing warehouse operators in Kenya."

Resolution: Agreed that one member shall represent the Council of Governors.

Rationale: This is to ensure that the Council membership is in line with the Mwongozo Guidelines requiring a maximum membership of nine (9).

It was further agreed to replace the "Kenya Farmers Association" with "an umbrella body representing farmers in Kenya", the Kenya Warehouse Operators Association" with "an umbrella body representing warehouse operators in Kenya" and the Kenya Bankers Association" with "an umbrella body representing bankers in Kenya". Moreover, it was agreed that Cabinet Secretary shall determine which body represents the farmers/warehouse operators.

Rationale: The various associations are not statutory bodies and their membership is voluntary and subject to fluctuations. Therefore the use of the words "umbrella body representing farmers/ warehouse operators/ bankers in Kenya" will provide the necessary elasticity of the law to ensure that the representative appointed to the Board always has the blessing of the organization that represents most of the Kenyan farmers/ warehouse operators/bankers;

4. **Clause 3(5)** qualifications of Chairperson of the Council

THAT Clause 3 of the Bill be amended by deleting sub-clause (5) and substituting thereof with the following sub-clause—

(5) A person shall be qualified for appointment as chairperson of the Board if such a person—

(a) is a citizen of Kenya;

(b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;

(c) holds relevant academic and professional qualifications including a university degree in a relevant field; and

(d) has at least eight years' experience in—

(i) agriculture;

THAT, Clause 21 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (8) —

“(8A) The Council shall maintain a database which shall be availed for inspection by any person upon application pursuant to Article 35 of the Constitution.”

Resolution: Agreed that this be deleted as it can be provided for in the Regulations.

12. **Clause 23**

Senate proposal:

THAT, Clause 23 of the Bill be further amended in sub clause (1) by inserting the words “or the county executive committee member” immediately after the word “of the Council” appearing in paragraph (e)

Rationale:

This is to provide for reprieve for those aggrieved by the decision of a county executive committee member.

Resolution: Agreed to.

13. **Clause 25**

THAT Clause 25 of the Bill be deleted and substituted therefor with the following new clauses—

Inspection
of stored
products

25.(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 its considered necessary

(2) The Council shall appoint and gazette inspectors who shall exercise such powers in accordance with regulations made under this Act.

Rationale: As the entity mandated to issue, suspend or revoke licenses under this Bill county governments should have powers to inspect records and commodities stored in a licensed warehouse.

Senate proposal: The Senate proposed to add counties as appointees and for them to employ inspectors.

Resolution: Not agreed to.

14. **Clause 30**

THAT, clause 30 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1)–

(1A) The Central Registry shall have the necessary infrastructure to link it with a central depository of a commodities exchange licensed by the Capital Markets Authority.

Further amendment by adding the word “system” immediately after the word “depository”; and

Senate proposal:

That a new subclause 1B be added to read as follows:

(1B) The Chief Executive Officer shall ensure that the infrastructure under sub-clause (1A) is availed.

Rationale: To create clarity.

Resolution: Agreed to.

15. **Clause 50**

THAT clause 50 of the Bill amended by deleting the word “shall” and substituting therefor the word “may”.

Resolution: Agreed to.

MIN. NO. MED/WRS/10/2019

DATE OF NEXT MEETING

The next meeting will be held on notice.

MIN. NO. MED/WRS/11/2019

ADJOURNMENT

The Sitting was adjourned at 7.00 p.m.

SIGNED:.....



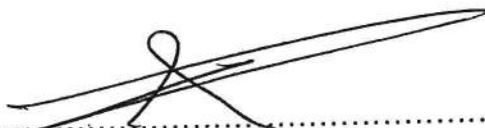
SEN. NJERU NDWIGA, EGH, M.P.

(CHAIRPERSON)

DATE:.....

7 - 5 - 2019

SIGNED:.....



HON. ADEN DUALE, EGH, M.P.

(VICE-CHAIRPERSON)

DATE:.....

7 - 5 - 2019

MINUTES OF THE THIRD SITTING OF THE MEDIATION COMMITTEE ON THE WAREHOUSE RECEIPT SYSTEM BILL (SENATE BILLS NO. 10 OF 2017) HELD ON TUESDAY, 7TH MAY, 2019 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING AT 11.00 A.M.

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Hon. Aden Duale, EGH, MP | - | Vice-Chairperson |
| 3. Hon. Adan Ali Haji, MP | - | Member |
| 4. Hon. Robert Mbui, MP | - | Member |
| 5. Hon. (Dr.) John Mutunga, MP | - | Member |
| 6. Hon. Ferdinand Wanyonyi, MP | - | Member |
| 7. Sen. Naomi Jillo Waqo, MP | - | Member |
| 8. Sen. (Dr.) Ochilo Ayacko, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|--------|
| 1. Sen. (Dr.) Christopher Lang'at, MP | - | Member |
| 2. Sen. (Dr.) Agnes Zani, MP | - | Member |

IN ATTENDANCE

- | | | |
|------------------------|---|---------------------------------------|
| 1. Mr. Ahmad Kadhi | - | Clerk Assistant I (National Assembly) |
| 2. Ms. Jemimah Waigwa | - | Legal Counsel I (National Assembly) |
| 3. Mr. Salem Lorot | - | Legal Counsel II (National Assembly) |
| 4. Ms. Sombe Toona | - | Legal Counsel II (Senate) |
| 5. Mr. Mitchell Otoro | - | Legal Counsel II (Senate) |
| 6. Ms. Carol Kirorei | - | Clerk Assistant III (Senate) |
| 7. Mr. David Ng'eno | - | Research Officer III (Joint Services) |
| 8. Mr. Philemon Okinda | - | Sergeant-At-Arms (Senate) |
| 9. Ms. Maureen Kweyu | - | Audio Officer (Joint Services) |
| 10. Ms. Nancy Akinyi | - | Intern (Committee Services) |

THE SECRETARIAT

MIN. NO. MED/WRS/12/2019

PRAYER

The Chairperson called the meeting to order at 11.30 a.m. followed by a word of prayer.

MIN. NO. MED/WRS/13/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Hon. Adan Ali, MP and seconded by Sen. Ochilo Ayacko, MP.

MIN.NO. MED/WRS/14/2019

CONFIRMATION OF PREVIOUS MINUTES

1. The Minutes of the 1st Sitting held on Tuesday, 30th April, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson and Vice-Chairperson after being proposed by Hon. Adan Ali Haji, MP, and seconded by Sen. Naomi Waqo, MP.
2. The Minutes of the 2nd Sitting held on Tuesday, 30th April, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson and Vice-Chairperson after being proposed by Sen. Ochilo MP, and seconded by Hon. Adan Ali Haji, MP.

MIN.NO. MED/WRS/15/2019

CONSIDERATION AND ADOPTION OF THE REPORT ON MEDIATION ON WAREHOUSE RECEIPT SYSTEM BILL, (SENATE BILLS NO. 10 OF 2017)

The Committee considered the Report and resolved that it be adopted and tabled in Parliament pursuant to Standing Orders No. 150(1) and 161(1) of the National Assembly and the Senate respectively. The Report was adopted after being proposed by Hon. Adan Ali Haji, M.P and seconded by Sen. Ochilo Ayacko, M.P.

MIN. NO. MED/WRS/16/2019

ADJOURNMENT

There being no other business, Sitting was adjourned at 11.45 a.m.

SIGNED:.....

SEN. NJERU NDWIGA, EGH, M.P.

(CHAIRPERSON)

DATE:..... 7 - 5 - 2019

SIGNED:..... 

HON. ADEN DUALE, EGH, M.P.

(VICE-CHAIRPERSON)

DATE:..... 7 - 5 - 2019



THE PARLIAMENT OF KENYA
(NATIONAL ASSEMBLY AND SENATE MEDIATION COMMITTEE)
TWELFTH PARLIAMENT
(THIRD SESSION)

**EXCERPT OF THE MEDIATED VERSION OF THE WAREHOUSE RECEIPTS
SYSTEM BILL, 2017 (SENATE BILLS NO. 10 of 2017) SHOWING THE AGREED-
UPON VERSIONS OF THE CONTENTIOUS CLAUSES**

The Mediation Committee identified Clauses 2 (definition of the terms “holder”, “warehouse receipt system”, “owner, “warehouse operator” and “inspector), 3 (3), 3 (5) and 3(9); 4; 9; 10; 11; 16; 17; 21 (4), 21(5) and 21(8); 23; 24; 25; 27; 30; 31; 32; 39; 41; 43; 44; 45; 48; 50 and the Schedule as being contentious and agreed on the following version—

(i) Clause 2 – Mediated Version

Interpretation

2. In this Act, unless the context otherwise requires—

No. 13 of 2013

"Agriculture and Food Authority" means the Agriculture and Food Authority established under section 3 of the Agriculture and Food Authority Act, 2013;

"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;

"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;

“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;

“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

3. (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 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) 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; and
- (i) one person nominated by the umbrella body representing bankers in Kenya and appointed by the Cabinet Secretary;**
- (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 recognized 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 letter addressed to the Cabinet Secretary;
- (b) on the written recommendation of the body which he represents revoking the nomination of the member;
- (c) **upon being found liable for gross misconduct or abuse of office in contravention of the Public Officers Ethics Act or any other relevant law;**
- (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 the Council determines that the member is incapable of performing the member's duties by reason of mental or physical infirmity;**
- (f) on 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.**

No. 4 of 2003

(iii) Clause 4— Mediated Version

Functions of the Council
4. The Council shall—

- (a) **facilitate the establishment, maintenance and development of the Warehouse Receipt System for agricultural commodities produced in Kenya.**

- (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

(iv) Clause 9—Mediated Version

- | | |
|---------------------------------|--|
| <p>Chief Executive Officer.</p> | <p>9. (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.</p> |
|---------------------------------|--|

(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 that 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 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) is adjudged or admits in writing to being bankrupt; or
 - (v) conducts himself in a manner deemed to be inconsistent with this Act.

(v) Clause 10- Mediated Version

Staff of the
Council.

10. 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.

(vi) Clause 11— Mediated Version

Consultants and
experts.

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

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

(vii) Clause 16- Mediated Version

Reports.

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

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.

(viii) Clause 17- Mediated Version

Licensing of
warehouse operators

17. (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 licence 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.

(ix) Clause 21- Mediated Version

Revocation of
licence and
suspension of
licence or
operations.

21.(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 sub-section (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

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.

(x) Clause 23- Mediated Version

Warehouse receipts 23. (1) There is established a Warehouse Receipts System
System Dispute Dispute Resolution Committee which shall hear and determine
Resolution
Committee 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;
- (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 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 Appeals Committee.

(xi) Clause 24 – Mediated Version

Grading
weighing
agricultural
products.

and of
24. (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.

(xii) Clause 25- Mediated Version

Inspection of stored
products

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

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

(xiii) Clause 27—Mediated Version

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

27. 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.

Establishment of
central registry.

30. (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 sub-section (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.

(xv) **Clause 31—Mediation Version**

Replacement of
receipts.

31. (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.

(xvi) **Clause 32—Mediated Version**

Warranty and
standing of
duplicate receipts.

32. A replacement receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.

(xvii) **Clause 39—Mediated Version**

Persons capable of
negotiating a
Warehouse Receipt

39. 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.

(xviii) **Clause 41—Mediated Version**

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

41. (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.

(xix) **Clause 43—Mediated Version**

Issuing of
fraudulent
warehouse receipts.

43. 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.

(xx) **Clause 44—Mediated Version**

Issuing of receipts
with false
information.

44. 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

exceeding ten years, or both.

(xxi) **Clause 45—Mediated Version**

Unlawful issuing of
duplicate receipts.

45. 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 Kenya shillings or a term of imprisonment not exceeding ten years, or both.

(xxii) **Clause 48—Mediated Version**

General penalty

48. 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.

(xxiii) **Clause 50 – Mediated Version**

Consultation

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

(xxiv) **Schedule—Mediated Version**

SCHEDULE

(s. 7(1))

PROVISIONS FOR THE MEETINGS AND PROCEDURE OF THE COUNCIL

Meetings

1. (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.

Quorum

2. (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.

Conflict
interest

of

3. (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.

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

Voting

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

Rules
procedure
minutes.

of
and

5. The Council shall—

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

(b) keep minutes of its proceedings and decisions.



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 10 of 2017)

**THE WAREHOUSE RECEIPT SYSTEM
BILL, 2017**

(A version of the Warehouse Receipt System Bill, 2017 (Senate Bills No. 10 of 2017) as agreed on 7th May, 2019, by a mediation committee appointed pursuant to Article 113 of the Constitution.)

Sen/ B/No. 10/2017

THE WAREHOUSE RECEIPT SYSTEM BILL, 2017

ARRANGEMENT OF CLAUSES

Clauses

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

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

3—Establishment of the Warehouse Receipts Systems
Council.

4—Functions of the Council.

5—Functions of the county executive committee member

6—Powers of the Council.

7—Conduct of the affairs of the Council.

8—Remuneration of members of the Council.

9—Chief executive officer.

10—Staff of the Council.

11—Consultants and experts.

12—Funds of the Council.

13—Financial year.

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**PART III—REGISTRATION, LICENSING AND
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17—Licensing of warehouse operators.

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- 20— Appeal to the Council
- 21—Revocation of licence and suspension of licence or operations.
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SCHEDULE—PROVISIONS FOR THE MEETINGS AND PROCEDURE OF THE COU

THE WAREHOUSE RECEIPT SYSTEM BILL, 2017

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 System Act, 2017. Short title and commencement.

2. In this Act, unless the context otherwise requires— Interpretation.

"Agriculture and Food Authority" means the Agriculture and Food Authority established under section 3 of the Agriculture and Food Authority Act, 2013; No. 13 of 2013

"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;

"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;

"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;

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

(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) 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 letter addressed to the Cabinet Secretary;
- (b) on the written recommendation of the body which he represents revoking the nomination of the member;
- (c) upon being found liable for gross misconduct or abuse of office in contravention of the Public Officers Ethics Act or any other law; No. 4 of 2003
- (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 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. The Council shall—

Functions of the Council.

- (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) advice 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. The county executive committee member —

Functions of 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. The Council shall have all the powers necessary for ^{Powers of the Council.} 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. (1) The business and affairs of the Council shall be ^{Conduct of the affairs of the Council.} as provided in the Schedule.

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

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

9. (1) There shall be a chief executive officer of the ^{Chief executive officer.} 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 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 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.

10. The Council shall employ such other staff as it ^{Staff of the Council.} 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. (1) The Council may engage the services of ^{Consultants and experts.} 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. The funds of the Council shall consist of— ^{Funds of the Council.}

- (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. The financial year of the Council shall be the ^{Financial year.} period of twelve months ending on the thirtieth June in each year.

14. The annual estimates of the Council shall be ^{Annual estimates.} prepared in accordance with the Public Finance ^{No. 18 of 2012} Management Act, 2012.

15. (1) The Council shall cause to be kept all proper ^{Accounts and audit.} 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 ^{No. 12 of 2015.} audited in accordance with the Public Audit Act, 2015 and ^{No. 18 of 2012.} the Public Finance Management Act, 2012.

16. (1) The chief executive officer shall, cause to be ^{Reports.} 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. (1) A warehouse operator shall apply to the ^{Licensing of warehouse operators.} 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. (1) A person applying for a licence under this Act^{Performance bond.} 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 —

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

19. 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^{insurance.} fire, flood, theft, burglary, earthquake, explosion and any other risk as the Cabinet Secretary may prescribe.

20. 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. Appeal to the Council.

21.(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; Revocation of licence and suspension of licence or operations.
- (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. The county executive committee member shall^{Fees.} charge fees for initial warehouse inspection and issuance of a warehouse operator's licence as may be prescribed by the Council.

23. (1) There is established a Warehouse Receipts^{Warehouse Receipts} System Dispute^{System Dispute} Resolution Committee^{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) the 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 Appeals Committee.

24. (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. ^{Grading and weighing of agricultural products.}

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

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

25. (1) The chief executive officer, appointed Council^{Inspection of stored products.} Inspectors or authorized officers of the Council may inspect any agricultural commodity stored in a licenced warehouse and records relating to warehouse receipts where its 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. The chief executive officer may, from time to time^{Publication of general inspections.} 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. The chief executive officer may, through^{Examination of books and records of licensed warehouses and warehouse operators.} 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. The Cabinet Secretary may, in consultation with^{Regulations.} the Council, make regulations generally for the better carrying into effect of the provisions of this Part.

PART IV— WAREHOUSE RECEIPTS

29. (1) A warehouse operator shall issue a warehouse^{Warehouse receipts.} 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. (1) There is established a Central Registry which shall be operated by the Council. Establishment of central registry.

(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 sub-section (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. (1) Any loss, theft or destruction of the warehouse receipt shall be reported to the warehouse operator who shall notify the central registry. ^{Replacement of receipts.}

(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. A replacement receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability. ^{Warranty and standing of duplicate receipts.}

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

33. (1) A Warehouse operator shall deliver the goods^{Obligation of warehouse operator to deliver.} 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. Where a warehouse operator delivers agricultural^{Wrongful release of goods.} commodities in a warehouse to a person who is not lawfully entitled to the possession, the warehouse operator shall be liable for loss.

35. (1) A warehouse operator may commingle^{Separation of goods and fungible goods.} agricultural commodities of the same type and grade.

(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.

36. (1) If goods are delivered to the warehouse^{Attachment or levy upon goods for which negotiable receipt has been issued.} 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. (1) A warehouse operator has a lien on the goods^{Warehouse operator's lien.} 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) such notice shall be given by delivery in person¹ 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. A warehouse receipt issued to a person may be^{Negotiation by endorsement.} negotiated by endorsement and delivery to another specified person.

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

40. Subject to the provisions of this section, a person^{Rights acquired after negotiation of warehouse receipts.} 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.

41. (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.

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

(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 endorser.

42. (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

43. A warehouse operator, or any officer, agent, or ^{Issuing of fraudulent warehouse receipts.} 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. A warehouse operator, or any officer, agent, or ^{Issuing of receipts with false information.} 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 both.

45. A warehouse operator or any officer, agent, or ^{Unlawful issuing of duplicate Receipts.} 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 both.

46. A person who deposits goods whose title belongs to ^{Depositing goods without proper title.} 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. A person who obstructs the inspection of a registered or ^{Obstruction} 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. A person convicted of an offence under this Act for which no 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.

General penalty.

PART VIII—MISCELLANEOUS PROVISION

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

Regulations.

(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 and the Statutory Instruments Act.

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

Consultation.

SCHEDULE

(s. 7(1))

PROVISIONS FOR THE MEETINGS AND PROCEDURE OF THE COUNCIL

1. (1) The Council shall meet at the Council's^{Meetings.} 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 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 ^{Quorum.} 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. (1) If a person has a personal or fiduciary interest in ^{Conflict of interest.} 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 ^{Voting.} 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.

The Warehouse Receipt System Bill, 2017
