

THE WAREHOUSE RECEIPTS ACT, 2005

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SCHEDULE
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No. 10 of 2005

I ASSENT

Benjamin W. Mhapa

President

[6th June, 2005]

An Act to provide for the establishment of a regulatory framework for warehouse receipts, to provide for licensing procedures of warehouses provide for other related matters.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

1. This Act may be cited as the Warehouse Receipts Act, 2005 and shall come into operation on such a date as the Minister may, by notice published in the *Gazette*, appoint.

Short title and commencement

2. This Act shall apply to Mainland Tanzania in respect of all agricultural commodities and to such other goods as the Minister may declare by order published in the *Gazette*.

Application

3. In this Act, unless the context requires otherwise-
“Act” means the Warehouse Receipts Act, 2005;
“Board” means the Tanzania Warehouse Licensing Board established under section 4 of the Act;

Interpretation

Establishment

- “commingle” means the binning and storage of commodities by class, under circumstances other than identity preserved;
- “conditioning” means, but not limited to, the drying or cleaning of commodities;
- “depositor” means any person who deposits a commodity in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the commodity;
- “failure” with regards to warehousing receipt; means-
- (a) inability of the warehouse operator to cover the storage obligations;
 - (b) public declaration of insolvency;
 - (c) revocation of a license and the leaving of an outstanding obligation to a depositor;
 - (d) failure to redeliver any commodity to a depositor in the ordinary course of business and where a *bona fide* dispute does not exist between the warehouse operator and the depositor;
 - (e) failure to make application for license renewal within sixty days after the annual license renewal date; or
 - (f) a denial of the application for a license renewal;
- “delivery” means voluntary transfer of possession from one person to another;
- “fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as equivalent of any other unit;
- “goods” for the purposes of this Act includes agricultural commodities;
- “holder” means a person who is in possession of a warehouse receipt, whether negotiable or non-negotiable, and who has proprietary right therein;
- “identity preserved” means the handling of a commodity in such a manner that guarantees the return of the actual quantity and quality of the commodity to the depositor;
- “license” means a license issued under this Act and includes any renewals and amendments thereof except where the context requires otherwise;
- “licensed warehouse” means any warehouse for which the Board, subject to other terms and requirements of the Act, has issued a license;
- “Minister” means, the Minister for the time being responsible for marketing of agricultural commodities;

- “order” means, an order by endorsement on the warehouse receipt;
- “person” means, any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity;
- “prescribe” means prescribe in the regulations;
- “revocation” means the permanent removal of a warehouse operator's license following a hearing on violations of the Act;
- “shortage” means that a warehouse operator does not have a sufficient amount of commodities by kind, class and quality, to cover his outstanding obligations for that commodity;
- “station” means a warehouse located not more than three kilometres from the central office of the warehouse, for which a warehouse license may be issued listing two or more stations on the same license; however, a fee shall be charged and collected for each station;
- “suspension” means the temporary removal of a license actuated by any action or measure taken pursuant to the provisions of this Act;
- “warehouse” means any building, structure or other protected enclosure approved by the Board to be used or useable, for the storage or conditioning of commodities or buildings used in relation thereof or including operation of the warehouse;
- “warehouse operator” means any person engaged in the business of operating a warehouse for receiving, storing, shipping or handling of commodities for compensation and includes the agent or employee the scope of whose actual or apparent authority renders such person to exercise rights or become liable under the Act;
- “warehouse receipt” means a receipt issued by a warehouse operator in respect of storage, handling or shipment of the commodity.

PART II

ESTABLISHMENT OF THE WAREHOUSE LICENSING BOARD

4.-(1) There is established a Board to be known as the Tanzania Warehouse Licensing Board.

of the
Board

(2) The Board shall be a body corporate, with perpetual succession and common seal, and in its corporate name:

- (a) be capable of suing and being sued;

- (b) subject to this Act, may borrow money, acquire and dispose of property; and
- (c) do all such things as a body corporate may lawfully do.

(3) The composition, procedures at the meeting and tenure of office of members of the Board shall be as stipulated in the Schedule to this Act.

Functions
of the
Board

5. The functions of the Board shall be to:

- (a) license warehouses;
- (b) license warehouse operators;
- (c) license warehouse inspectors;
- (d) approve negotiable warehouse receipts books; and
- (e) carry out or perform such other functions as are conferred or imposed on it by this Act;
- (f) perform any other function as may be assigned or directed by the Minister.

Powers
of the
Board

6.-(1) For the purpose of carrying out its functions, the Board shall have power to-

- (a) investigate the receiving, storing, conditioning, shipping and handling of commodities and complaints with respect thereto, including the inspection of any warehouse, commodities stored and all property and records pertaining thereto;
- (b) determine whether the warehouses for which licences are applied for or have been issued, are suitable for the receiving, storage, conditioning, shipping, and handling of the commodity stored or expected to be received, stored, conditioned, shipped, or handled;
- (c) require such reports as it may deem necessary in the administration of this Act;
- (d) require licensed warehouse operators to terminate receiving, storage, conditioning, shipping, and handling agreements upon revocation of their license;

- (e) administer oaths and issue summons to compel attendance and testimony of witnesses and/or the production of records in connection with any investigation or hearing;
- (f) prescribe all forms, within the limitations set forth in this Act, including the forms of receipts and applications for licenses;
- (g) propose to the Minister all necessary rules and regulations for proper carrying out the provisions of the Act;
- (h) investigate the storage, warehousing classification according to grades and otherwise, weighing, and certification of goods;
- (i) at any time, with or without application, inspect or cause to be inspected all warehouses licensed under this Act;
- (j) classify warehouses licensed or applying for a licence in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or to be issued for them;
- (k) prescribe, within the limitations of the Act, the duties of warehouse operators conducting warehouses licensed with respect to their care of and responsibility for the goods stored;
- (l) provide guidelines and standards for the suitability for the proper storage of the goods for which a license is applied;
- (m) suspend or revoke any license issued to any warehouse operator conducting a licensed warehouse for any contravention of or failure to comply with any provision of the Act or regulations and other legislative instruments made under the Act;
- (n) charge, assess and collect fee for every examination or inspection of a warehouse and the issuance of licences;
- (o) examine all books, records, papers, and accounts of warehouse operators licensed under this Act and of the warehouse operators conducting the warehousing business relating to them;

- (p) retain the charged fee for the purposes of improving the services provided under this Act;
- (q) borrow for the purposes of carrying out its functions under this Act;
- (r) approve negotiable warehouse receipt books to be used under this Act; and
- (s) carry out any other activity incidental or conducive to the carrying out of its functions under section 5 of this Act.

(2) The Board may delegate to the Managing Director, Officer or any other employee of the Board, performance of and function or the exercise of any of its powers except for powers with regards to approval of budget and approval of the balance sheet, audited accounts and statement of account.

Managing
Director

7.- (1) There shall be a Managing Director of the Board who shall be appointed by the Minister from among three names recommended by the Board.

(2) The Managing Director shall be the Chief Executive Officer of the Board and shall be responsible for the day-to-day operations of the Board.

(3) Subject to the provisions of this Act, the Managing Director shall be responsible for the management of the funds, property and business of the Board and for the administration, organization and control of the staff of the Board.

(4) The Managing Director shall be a Secretary to the Board.

(5) The Managing Director shall, from time to time, in writing, keep the Board informed of the progress of the business of the Board.

(6) In addition to any other functions that may be conferred upon him by the Board, the Secretary shall-

- (a) keep the custody of the seal of the Board;
- (b) take minutes of the meetings of the Board; and

(c) keep records of all activities of the Board.

8.-(1) The Board may employ such number of employees and such other officers as it may determine to be necessary for the efficient performance of the functions and the exercise of the powers of the Board.

Other
staff

(2) The Board may, on the terms and conditions as it may deems fit, fix remuneration, grant pension, gratuities or other benefits on retirement or termination of services of the officers and employees of the Board.

(3) The Board may delegate any of its powers of employment under this section to the Managing Director, subject to such terms and conditions as the Board may determine.

PART III FINANCIAL PROVISIONS

9. The funds of the Board shall consist of-

Sources
of funds

- (a) such sums of money as may be appropriated by Parliament;
- (b) all moneys received by the Board from inspecting and supervising warehouses;
- (c) all moneys borrowed by the Board;
- (d) all moneys derived from approving warehouse receipt books;
- (e) any other moneys received by or donated or made available to the Board for the purpose of performing its functions.

10. The Board shall perform its functions in accordance with prudential financial principles.

Duty of
the
Board to
operate
on pru-
dential
princi-
ples

Estimates

11.-(1) The Managing Director shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval, estimates of income and expenditure of the Board for the next following financial year and may, at any time before the end of each financial year, prepare and submit to the Board for approval any estimates supplementary to the estimates of the current year.

(2) No expenditure shall be made out of the funds of the Board unless that expenditure is part of the expenditure approved by the Board under the estimates for the financial year in which that expenditure is to be made or supplementary estimates.

Accounts

12.-(1) The Board shall ensure that the management keeps proper accounts and records of its transactions and affairs and shall ensure that all moneys received are properly accounted for, all payments of its moneys are correctly made and properly authorized and that adequate control is maintained over its property and over the incurring of liabilities by the Board.

(2) The Board shall cause to be prepared in respect of each financial year, and not later than three months after the close of the financial year, a statement of accounts which shall include a report on the performance of the functions of the Board during that financial year; comprising of-

- (a) a balance sheet and a statement of income and expenditure of the Board in respect of that financial year; and
- (b) any other information in respect of the financial affairs of the Board as the Minister may in writing, require.

Audit

13.-(1) The accounts of the Board shall, in respect of each financial year, be audited by the Controller and Auditor-General or by an auditor appointed by the Controller and Auditor-General.

(2) Within six months after the close of each financial year, the accounts including the balance sheet of the Board in respect of that financial year shall be audited and the balance sheet be placed before the Board for approval.

(3) The Controller and Auditor-General and any auditor appointed by the Controller and Auditor-General shall access all books of accounts, vouchers and other financial records of the Board and is entitled to have any information and explanations required in relation thereof.

(4) The Controller and Auditor-General shall, within two months after receipt of the statement of accounts under subsection (2) of this section, audit the accounts and deliver to the Board a copy of the audited accounts together with a statement on matters which in his opinion should be brought to the attention of the Minister.

(5) The Board, shall as soon as possible upon receiving report of the Controller and Auditor General, deliver to the Minister a copy of the audited accounts together with the auditor's report.

14.-(1) The financial year of the Board shall be the period of twelve months beginning from the 1st day of July and ending on the 30th day of June in the year following.

Financial
year

(2) Without prejudice to subsection (1) the first financial year of the Board may be a shorter period commencing on the date on which the Board is established and ending with the next following 30th day of June.

PART IV LICENSING PROCEDURE

15.-(1) The Board may, upon application, issue a warehouse license for the conduct of warehouse business.

Condi-
tions for
operat-
ing a
ware-
house
under the
Act

(2) Two or more warehouses which constitute a station may be licensed under a single licence.

(3) All warehouses licensed under a single licence shall be treated as a single warehouse for all the purposes of this Act, including issuance of receipts, and delivery of commodities.

16.-(1) Any person who requires a licence to conduct warehousing operations or business shall apply to the Board in the manner prescribed by regulations.

Licensi-
ng pro-
cedure

(2) The Board shall, before granting a warehouse licence, either by itself or any other authorized person, inspect any warehouse in respect of which a license is applied, to determine whether the warehouse is suitable for the storage of the particular goods for which the license is applied.

(3) The Board shall, upon being satisfied that a warehouse is suitable for the storage of the goods in question, grant a warehouse license to the applicant.

(4) The applicant shall, upon being granted a licence pay a fee prescribed by the Board.

Validity
of
licence

17. The validity of the license shall be twelve months and shall be renewable subject to the provisions of this Act.

Condi-
tions for
granting
a license

18.-(1) The Board shall not grant any license, unless the applicant has satisfied all the conditions prescribed by the Act.

(2) Before the Board grants a license to any person to operate a warehouse it shall satisfy itself of the following:

- (a) that the applicant is in possession of a Warehouse whether as a tenant or owner;
- (b) that upon inspection the warehouse is suitable for Warehousing of respective goods in accordance with the regulations made under this Act;
- (c) that the applicant's Director or Manager is of good business and management records and has not been involved in any criminal proceedings involving business and dishonesty or impropriety;
- (d) that the warehouse and the goods which are or may be kept therein are fully insured in respect of fire, theft and burglary or any other damage; and
- (e) that the applicant is financially capable of conducting the business of warehousing.

Appli-
cant to
execute
bond
Action
on bond

19.-(1) Each warehouse operator applying for a license under this Act shall, execute and file with the Board a bond sufficient to secure the faithful performance by him of the obligations as a warehouse

operator under this Act and regulations and other statutory instruments made under this Act.

(2) Where the Board determines that a previously approved bond is, or for any cause has become insufficient, it may require an additional bond or bonds to be given by the warehouse operator concerned, conforming with the requirements of this section, and, unless the additional bond is given within the time fixed by a written demand made by the Board, the license of the warehouse operator may be suspended or revoked by the Board.

20. Any person injured by reason of the breach of any obligation for which a bond is given, shall be entitled to sue on the bond in his or her own name in any court, not lower than the Court of a Resident Magistrate to recover the damages for injury sustained because of the breach.

by person injured

21.-(1) Upon execution of a bond, the Board may designate the warehouse in respect of which a bond was executed as both licensed and bonded.

Designation as a licensed and bonded warehouse

(2) Notwithstanding anything in this Act, no warehouse shall be designated as licensed and bonded under this Act and no name or description conveying the impression that any of such warehouse is licensed and bonded, shall be used-

- (a) until a licence has been issued and a bond has been filed and approved by the Board; or
- (b) unless the licence issued under this Act remains unsuspended and not revoked.

22.-(1) Each applicant for a license to operate a warehouse in accordance with this Act shall, as a condition to the granting, file or cause to be filed with the Board a certificate of insurance evidencing effective policy of insurance issued by an insurance company authorized to do business in Tanzania in the name of the applicant insuring all commodities which are or may be in such warehouse for their full market value for loss by fire, theft, bulgaraly, arson or any other risk which the Board may direct to be included under this category.

Casualty insurance; recovery for loss

(2) In the case of outbreak of fire, bulgaraly, arson or any other risk categorized under sub-section (1) destroys or damages any commodities in any licensed warehouse, the warehouse operator shall, upon demand by the depositor, and upon being presented with the receipt or other evidence of ownership and after deducting the warehouse operators charges and advances at the market value of the commodity, make the settlement.

(3) The warehouse operator shall make complete settlement to all depositors having commodities stored in any warehouse, damaged or destroyed, within ten days' after settlement with the insurance company.

(4) Failure by the warehouse operator to make settlement shall be the grounds for suspension or revocation of the warehouse operator's license.

Additional insurance

23.-(1) Where the Board shall determine that a previously approved insurance is insufficient, it shall require additional insurance to be given by the warehouse operator, conforming to the requirements of this Act.

(2) Without prejudice to subsection (1), the warehouse operator shall be required to upgrade the insurance policy with a view to maintain sufficient policy all the time arising from settlement of loss through insurance, the warehouse operator shall meet the amount that falls short of the value of the loss unable to be settled through insurance.

Cancellation of insurance or suspension and revocation of licence

24.-(1) A licensed warehouse operator shall not cancel or suspend an approved insurance policy or arrange for substitution of insurance policy without prior written approval of the Board.

(2) The insurance company may cancel insurance required by this Act only after the expiration of thirty days period from the date of mailing, by registered or certified mail, of the notice to the Board of the intention to cancel or suspend the insurance policy.

(3) The insurance company shall, at the time of giving notice to the Board send a copy of the notice to the warehouse operator.

(4) Notwithstanding any other provision of this Act, failure by the warehouse operator to provide new evidence of insurance within fifteen days after the Board receives the notice of cancellation shall cause the warehouse license to be suspended or revoked.

25.-(1) Every applicant for a licence to operate a warehouse under this Act shall, as a condition to the granting, file or cause to be filed with the Board the commodities from among the notified list proposed to be warehoused and a copy of the schedule of charges as a warehouse operator.

Schedule
of
charges

(2) A licensed warehouse operator shall not make a change in the charges unless a notice of such change and the reasons thereof have been filed with and the Board approves the change.

(3) The Board shall refuse to approve any change, which it finds to be unjust, unreasonable, or discriminatory.

(4) Where the Board receives a proposal for changes of charges it shall afford opportunity to the warehouse operator to substantiate reasons for changes.

(5) Any person aggrieved by the decision of the Board, may appeal to the Minister.

26.-(1) The Board may revoke, suspend, or deny a license in any case, in which it determines, after providing opportunity for a hearing, to the warehouse operator that there has been violation of or failure to comply with the requirements of this Act.

Revoca-
tion, sus-
pension,
and
denial of
licenses

(2) Any person aggrieved by the suspension or revocation of a license by the Board, may appeal to the Minister.

27.-(1) Where a license is revoked, suspended or has expired, the warehouse operator shall terminate, in the manner prescribed by the Board, all arrangements covering the receiving, storing, shipping, conditioning, or handling of commodities in the warehouse stations covered by such license, but shall be permitted, under direction or supervision of the Board to deliver commodities previously received.

Opera-
tion after
revoca-
tion, sus-
pen-
sion, or
expira-
tion of
licenses

(2) During any suspension of a license, the warehouse operator may, under direction or supervision of the Board, operate the warehouse, station, but shall not receive any commodities for storage, conditioning, shipping, or handling during the term of such suspension.

Power to
appoint
inspe-
ctors

28.-(1) The Board may appoint or otherwise authorize persons or a group of persons to be warehouse inspectors.

(2) The Minister shall prescribe in the regulations qualifications of a person to be appointed as an inspector.

Functions
of Inspe-
ctors

29. The inspectors appointed pursuant to the provisions of this Act shall have power to inspect warehouses premises and goods kept to ensure that the warehouse operator observes the conditions in this Act, regulations and those appearing on the issued license.

Power of
entry,
inspe-
ction,
etc.

30. A warehouse inspector or any other person duly authorized in writing in that behalf may, at any reasonable time during the day, enter a warehouse premises for the purposes of ensuring that the provisions of this Act, are observed.

PART V WAREHOUSE RECEIPTS

Who
may
issue a
ware-
house
receipt

31. A warehouse receipt shall only be issued by a warehouse operator duly authorized and licensed to do so under the provisions of this Act.

Ware-
house
receipt
as evi-
dence of
propri-
etary
rights

32.-(1) Subject to the provisions of this Act, any warehouse receipt drawn and issued by a warehouse operator in accordance with the provisions of sections 5 and 31 shall be a proof of the holder having proprietary rights in the goods same as of that person in respect of which such warehouse receipt was issued.

(2) In relation to warehouse receipts a person acquires proprietary rights in the goods if that person is entitled to the ownership of the goods:

- (a) in return for a binding commitment to extend credit or for extension of an immediately available credit, whether or not drawn;
- (b) as security for or in total or partial satisfaction of a pre-existing claim;
- (c) by accepting delivery under a pre-existing contract for purchase; or
- (d) in return for any consideration sufficient to support a pre-existing contract.

33.-(1) The warehouse receipt shall contain the following information and terms:

- (a) the location of the warehouse where goods are stored;
- (b) the date of issue of the receipt;
- (c) the serial number of the receipt;
- (d) a statement whether the goods received will be delivered to the bearer, to a specified person or that specified person's order;
- (e) a short description of the goods or of the packages containing them;
- (f) the registered signature of the authorized warehouse operator;
- (g) the nature and fact of ownership of the goods, whether solely or jointly or commonly owned with others; and
- (h) a statement as to the amount of advances made and of liabilities incurred.

Contents
of the
ware-
house
receipt

(2) A warehouse operator shall be liable to the person injured thereby, for damages caused by the omission of any such term required to be included in the warehouse receipt under this Act.

(3) A warehouse operator may insert in a receipt any other terms and conditions which are not contrary to the provisions of this Act and which do not impair obligations of delivery or duty of care.

(4) Any provision appearing in a warehouse receipt, purporting to contain any condition which is contrary to this Act, shall not be capable of enforcement by the court.

Negotiable
warehouse
receipts

34.-(1) A warehouse receipt in which it is stated that the goods received will be delivered to the person named in the receipt or his order shall be known as a negotiable warehouse receipt.

(2) No words shall be inserted in a negotiable receipt with the effect of rendering that receipt non-negotiable.

(3) The Minister may prescribe in the regulations the procedure and limits of negotiation of negotiable warehouse receipts.

Non-negotiable
warehouse
receipts

35. A warehouse receipt on which it is stated that the goods received will be delivered to the bearer shall be treated as a non-negotiable receipt.

Altered
warehouse
receipts

36. An alteration to a warehouse receipt shall be regarded as-

- (a) immaterial if the alteration does not affect ex-ante proprietary rights of the holder;
- (b) authorized when made with an implied or direct permission or connivance of the Warehouse operator and which render a warehouse operator and the perpetrator liable under the provisions of this Act; or
- (c) unauthorized but made without fraudulent intent, when made without an implied or direct permission or connivance of the warehouse operator and which render the warehouse operator liable according to the terms of the receipt, as they were before alteration.

Rights of
purchasers
of
altered
receipt
against
warehouse
operator

37.-(1) A purchaser of a warehouse receipt for value without notice of alteration shall acquire the same proprietary rights against the warehouse operator which the purchaser would have acquired if the receipt had not been altered at the time of purchase.

(2) A purchaser of a warehouse receipt shall be regarded to have had notice of alteration, if before the purchase of the warehouse receipt, he

or his agent took part in or influenced the alteration of the said warehouse receipt.

(3) A purchaser of an altered warehouse receipt who has been found or who could be reasonably imputed with possession of notice of alteration commits an offence and shall be proceeded against under section 74 in the same footing with the operator.

38.-(1) Any loss, theft or destruction of the warehouse receipt, shall be reported by the warehouse operator to the Board.

Lost or
missing
ware-
house
receipts

(2) If a warehouse receipt has been lost, stolen or destroyed, a duplicate may be issued by the warehouse operator provided that the request of the holder is accompanied by:-

- (a) a police report of the loss, theft, or destruction of the receipt
- (b) a bank guarantee covering the current market value of the goods; and
- (c) an affidavit sworn before a commissioner for oaths; and
- (d) a copy of a notice of loss, theft, or destruction published in a newspaper of nationwide circulation.

(3) The Minister may, by order published in the *Gazette*, prescribe some of the requirements under subsection (2) which shall not apply to a certain class or category of warehouses.

(4) An appeal regarding the issuance or otherwise of a duplicate receipt shall be made to the Board.

(5) Any person dealing in warehouse operation using the original receipt after a duplicate receipt has been issued commits an offence for issuing false information.

39.-(1) A warehouse receipt upon the face of which the word "duplicate" is plainly placed shall be a representation and warranty by the warehouse operator that such warehouse receipt:-

Dupli-
cate
ware-
house
receipts

- (a) is an accurate copy of the original receipt ; and
- (b) has the same rights as the original receipt properly issued and outstanding at the date of issue of the duplicate.

(2) A duplicate receipt issued shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.

PART VI

RIGHTS AND OBLIGATIONS OF WAREHOUSE OPERATORS

Obligation of a warehouse operator to deliver goods

40. Except as provided in this Act, a warehouse operator shall deliver the goods upon demand made by the holder of the warehouse receipt or depositor, if the holder or depositor:

- (a) offers to effect payments for the warehouse operator's lien on the goods;
- (b) offers to sign relevant documents proving the delivery of the goods.

Obligation to deliver in accordance to the demand of the holder

41.-(1) Subject to section 40, the warehouse operator shall have obligation to deliver the goods in accordance with the demand by the warehouse receipt holder or, as the case may be, the depositor.

(2) Where the warehouse operator refuses to deliver the goods as demanded by the warehouse receipt holder or depositor, the burden shall be upon the warehouse operator to establish the existence of any lawful excuse for the refusal.

(3) Where the warehouse operator refuses to deliver the goods as demanded by the depositor or holder of warehouse receipt because of the reason that the warehouse receipt was altered, the holder or depositor who had notice of alteration shall be estopped from demanding more or less proprietary rights in the warehouse receipt than those provided on the altered warehouse receipt.

Justification for delivery of goods

42. Subject to provisions of sections 40 and 41, a warehouse operator shall deliver goods only after being satisfied that:

- (a) the person receiving the goods is lawfully entitled to the possession of the goods;

- (b) by the terms indicated in the warehouse receipt issued for the particular goods, that person is entitled to delivery, either by himself or on his written authorization, to another person.

43.-(1) A warehouse operator shall not deliver the goods if, prior to delivery, he receives information or otherwise becomes aware that a person to whom delivery is about to be made is not legally entitled to the delivery.

Liability for mis-delivery

(2) A warehouse operator who:

- (a) comes to know that the person who claim delivery of the goods is not in fact lawfully entitled to the possession thereof;
- (b) ignores the request not to make delivery of the goods, made under paragraph (a);
- (c) had information or knowledge that the delivery about to be made was to one not lawfully entitled to the possession of the goods,

and continues to deliver the goods shall be liable for conversion to all persons having proprietary rights in or possession of the goods.

44. The warehouse operator shall not be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of a receipt given for the goods when they were deposited, even if such receipt is negotiable, in a situation where goods have been lawfully sold or disposed of-

Exception to obligation to deliver

- (a) because of their perishable or hazardous nature; or,
- (b) to satisfy the warehouse operator's lien.

45.-(1) Except as provided for under this Act, where a warehouse operator delivers goods for which he had issued a negotiable receipt shall take up and cancel the receipt.

Liability for failure to cancel warehouse receipt after delivering goods

(2) A warehouse operator who delivers goods for which he had issued a negotiable receipt, and fails to take up and cancel the receipt

he shall be liable for failure to deliver goods to depositor or to any one who purchases such receipt for value and in good faith.

(3) If the receipt is not taken up or cancelled as provided for under subsection (1) of this section, the fact that the purchaser acquired title to the receipt before or after the delivery of the goods by a Warehouse Operator shall not exonerate the warehouse operator from liability.

Liability for failure to cancel or mark warehouse receipt when part of the goods have been delivered

46.-(1) Except as provided under this Act, where a warehouse operator delivers part of the goods for which he had issued a negotiable warehouse receipt, he shall-

- (a) take up and cancel that receipt and issue a new receipt for the remaining goods; or
- (b) place conspicuously upon it a statement of what goods and packages have been delivered.

(2) A warehouse operator who fails to comply with the provisions of subsection (1) shall be liable for failure to deliver all the goods specified in the receipt to any person who purchases such receipt for value and in good faith.

(3) If the receipt is not taken up or cancelled as provided for under subsection (1), the fact that the purchaser acquired title to the receipt before or after the delivery of any portion of the goods by a warehouse operator shall not exonerate the warehouse operator from liability.

Liability after a warehouse receipt has been lost, stolen or destroyed

47. Subject to the provisions of section 38, a warehouse operator shall be liable for failure to deliver goods to a person to whom the lost, stolen or destroyed warehouse receipt has been or shall be negotiated for value in good faith and without notice of the fact that a duplicate receipt has been issued or goods have already been delivered.

Delivering goods to persons with valid titles or right

48.-(1) The warehouse operator shall take all necessary precautions to ensure that the delivery of goods are made to a person who has lawfully obtained a warehouse receipt.

(2) The warehouse operator's title or right to the possession of goods shall only be derived directly or indirectly from -

- (a) a transfer made by a depositor at the time of or subsequent to deposit of goods; or
- (b) lien.

(3) Unless the title or right to possession of the goods by a warehouse operator is obtained in accordance with the provisions of subsection (2) no title or right to possession of goods shall exonerate the Warehouse Operator from liability for refusing to deliver the goods according to the terms indicated on the warehouse receipt.

49.-(1) In cases where more than one person are claiming title or possession of the goods, the warehouse operator shall, before making delivery of those goods to either of them, require all known claimants to goods to interplead in accordance with the Civil Procedure Code Act, 1966.

Ascertain-
ing
valid
titles to
goods
Act No.
49 of
1966

(2) The suit for which the warehouse operator shall request claimants to interplead referred to under subsection (1), may be filed as an action against the warehouse operator for non-delivery of the goods, or as an original suit.

(3) The warehouse operator shall not be liable for non-delivery if he has evidence to believe that someone other than the depositor or person claiming under him, has a claim to the title or possession of the goods, and that because of that evidence the warehouse operator is taking reasonable steps to ascertain the validity of the adverse claim or to initiate legal proceedings to compel all claimants to interplead.

(4) The ascertainment of the right claimant of the goods by interpleading or any other manner shall be initiated within twenty four hours of initial notice to the warehouse operator and the procedure shall be completed within seven days.

(5) Except as is allowed under this section the fact that a third person has right or title to goods shall not be a defense to an action brought by the holder of the warehouse receipt or person claiming under him against the warehouse operator for failure to deliver the goods according to the terms indicated on the warehouse receipt.

Liability
for mis-
des-
cribed
goods

50.-(1) Subject to subsection (2), the warehouse operator shall be liable to the holder of the warehouse receipt for damages caused by non-existence of the goods or by failure of the goods being delivered to correspond with the description thereof in the receipt at the time of deposit.

(2) The warehouse operator shall not be liable for goods which are being conditioned or processed and such conditioning or processing is noted on the warehouse receipt.

(3) A mere description in the warehouse receipt by a statement of marks or label, or upon packages, or by a depositor's statement that the goods do contain goods of a certain kind, or by words of like purport, though found to be true, shall not render the warehouse operator liable.

Ware-
house
opera-
tor's duty
of care

51.-(1) A warehouse operator shall exercise such care in regard to the goods kept by him as reasonably and as carefully as a reasonable and careful owner of similar goods would exercise.

(2) In addition to other conditions that may be imposed to the warehouse operator's license, the warehouse operator shall be liable for breach of duty of care if he acts contrary to subsection (1) of this section in keeping safe custody of the goods.

Duty
to keep
goods
separate-
ly

52. Except as provided in this Act a warehouse operator shall keep goods of each depositor separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit the identification and re-delivery of the goods deposited.

Co-
ming-
ling of
fungible
Goods

53.-(1) A warehouse operator may, with the approval of the holder of warehouse receipt or the depositor, mingle fungible goods with other goods of same kind and grade.

(2) In case the warehouse operator has mingled the goods in accordance with subsection (1) of this section, various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

(3) The warehouse operator shall be severally liable to each depositor for the care and delivery of his share of the mass to the same extent and under the same circumstances as if the goods had been kept separate.

54.-(1) A warehouse operator's lien on goods deposited or the proceeds thereof shall derive from-

- (a) all lawful charges for storage and preservation of the goods;
- (b) lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooping and other charges and expenses in relation to such goods;
- (c) all reasonable charges and expenses incurred for notice and advertisements of sale; and
- (d) sale of the goods where default has been made in satisfying the warehouse operator's lien.

Ware
house
opera-
tor's
right to
lien

(2) The term "warehouse operator's lien" as used in subsection (1) and subsequent provisions of this Part means the right of a warehouse operator to recoup expenses necessarily incurred for services rendered or supplied in accordance with the provisions of subsection (1) and the term "right of lien" shall be construed accordingly.

55. A warehouse operator's lien may be enforced subject to the provisions of section 56 -

- (a) against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and
- (b) against all goods belonging to others, which have been deposited by the person who is liable as a debtor for the claims to which the lien is asserted if such person has been entrusted with goods at the time of deposit just as person who takes the goods in good faith and for value.

Enforce-
ment of
lien

56. A warehouse operator shall lose right of his lien upon the goods by -

Loss of
lien

- (a) surrendering possession thereof; or
- (b) refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this Act.

Statement of charges under lien

57. Where a negotiable receipt is issued for goods, the warehouse operator shall have no lien thereon, except for charges of storage of those goods, subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed in which case there shall be a lien for the charges enumerated so far as they are within the terms of section 54, although the amount of the charges so enumerated is not stated in the receipt.

Refusal to deliver goods until lien is satisfied

58. A warehouse operator having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

Warehouse operator's lien does not preclude other remedies

59. The fact that a warehouse operator has or has not a lien upon the goods, shall not affect entitlement to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouse operator.

Methods of enforcing the lien

60.-(1) A warehouse operator's lien may be satisfied by-

- (a) sale of goods;
- (b) other remedies allowed by the law for the enforcement of a lien against personal property; or
- (c) any other action for recovery of the warehouse operator's claim.

Perishable and hazardous goods

61.-(1) Where the goods are of a perishable nature and likely to deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, are likely to injure other property or endanger the life of persons legally likely to come into contact with the goods, the

warehouse operator may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of failure of such person to satisfy the lien and to remove such goods within the time so specified, the warehouse operator may sell the goods at public or private sale with or without advertising.

(2) If after reasonable efforts have been made the warehouse operator is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

(3) The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under this Act.

PART VII

NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

62. A negotiable warehouse receipt to the order of a name of person may be negotiated by endorsement and delivery-

Different ways of negotiating a warehouse receipt

- (a) after endorsement in blank or to the bearer; or
- (b) after endorsement to a specific person.

63.-(1) Negotiation of a negotiable warehouse receipt after it has been endorsed to a specified person shall require endorsement of the endorsee as well as delivery.

Negotiation by endorsement

(2) An endorsement made pursuant to subsection (1) shall be made to a specified person and may be again negotiated to another specified person and subsequent negotiations shall be done in the like manner.

(3) For the purposes of this section, a negotiable warehouse receipt shall be regarded as "duly negotiated" when it is negotiated in the manner stated under this section to a person who purchases it in good faith, without notice of any defect or claim to it on the part of any person, and for value.

Effect of
endorse-
ment to
non-
negoti-
able
receipt

64. Endorsement of a non-negotiable warehouse receipt shall not render it negotiable.

Persons
capable
of nego-
tiating a
ware-
house
receipt

65. A negotiable warehouse receipt may be negotiated by any person in possession of the same irrespective of the manner the warehouse receipt was acquired, if, by the terms of the receipt, the warehouse operator undertakes to deliver the goods to the order of such person or if at the time of negotiation the receipt is in such a form that it may be negotiated by delivery.

Rights
acquired
after due
negotia-
tion of
ware-
house
receipt

66.-(1). Subject to the provisions of this section, a person to whom the receipt has been duly negotiated, shall acquire-

- (a) such title to goods as the person negotiating the receipt to him had ability to convey to a purchaser in good faith for value and also such title to the goods as the depositor or person to whose order 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 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 delivered to the warehouse operator after the warehouse receipt was delivered.

(2) The negotiation of a warehouse receipt in good faith and the acquisition of title by a person to whom a warehouse receipt has been negotiated, shall create a direct obligation to the warehouse operator to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouse operator had contracted directly with him.

67.-(1) A warehouse receipt may be transferred without negotiation if it has thus been transferred by-

- (a) the holder to another person under a separate arrangement or agreement; or
- (b) order of the court.

Rights acquired in the absence of due negotiation of a warehouse receipt

68.-(1) A transferee of a warehouse receipt, which is not duly negotiated shall acquire thereby against the transferor, the title of the goods.

Rights of a transferee of a warehouse receipt

(2) The title acquired by the transferee shall be subject to the terms of the agreement with the transferor.

(3) The court may order a warehouse receipt to be transferred where it is proved that there was an agreement to that effect between the transferor and the transferee.

(4) Where a warehouse receipt that has been transferred becomes non-negotiable, in order to acquire title to the goods, the transferee shall notify the warehouse operator of the transfer to him of such warehouse receipt.

(5) Proceedings instituted for the purpose of enforcing rights of a transferee of a warehouse receipt shall be made by way of summary procedure provided for under Order XXXV of the Civil Procedure Code Act, 1966.

Act No. 49 of 1966

(6) Where a warehouse receipt that has been transferred is not negotiated before the transferee notifies the warehouse operator of the transfer to him, the transferee's claim of title to the goods may be defeated by-

- (a) an attachment order or execution upon the goods by a creditor of the transferor to the extent of such order or execution, or
- (b) a subsequent purchaser in good faith from the transferor or a subsequent sale of the goods by the transferor.

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

69.-(1) The transferee of a negotiable warehouse receipt for value and in good faith shall have the right to compel the transferor of such receipt to endorse the receipt in a case where endorsement is essential for negotiation.

(2) In a case where it is essential that the warehouse receipt should be endorsed before it is transferred, that warehouse receipt shall not be regarded as negotiated until the transferor endorses it.

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

Warranties on negotiation of the warehouse receipt

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

- (a) the receipt is genuine;
- (b) has a 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 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 VIII OFFENCES AND PENALTIES

Issue of receipts for goods not received

71. A warehouse operator, or any officer, agent, or servant of a warehouse operator, who issues or aids in issuing a receipt knowing that 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 upon conviction shall be liable for a term of imprisonment for a term not exceeding five years, or to a fine not exceeding five million shillings or to both.

72. A warehouse operator, officer or agent or servant of a warehouse operator, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year, or to a fine not exceeding one million shillings or to both.

Issue of receipt containing false statement

73.-(1) A warehouse operator, or any officer, agent, or servant of a Warehouse Operator, who issues or aids in issuing a duplicate or additional negotiable receipt for the same goods or any part of them which is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate" commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five million shillings or to both.

Issue of duplicate receipts not so marked

(2) The provision of this section shall not apply where a duplicate of a warehouse receipt is issued in accordance with the provisions of section 38.

74. Where there are deposited with or held by a warehouse operator goods of which he is owner, either solely or jointly or in common with others, then such warehouse operator or his agents or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods and omits to state any fact with respect to ownership, commits an offence shall be liable for imprisonment for a term not exceeding one year or to a fine not exceeding one million shillings or both.

Issue for warehouse operator's goods of receipts, which do not state that fact

75. A warehouse operator, or any officer, agent, or servant of a Warehouse Operator who delivers goods out of the possession of such warehouse operator, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such receipt is outstanding and uncanceled, without obtaining possession of that warehouse receipt, at or before the time of such delivery, shall be liable for imprisonment for a term not exceeding one year, or by a fine not exceeding one million shillings or to both.

Delivery of goods without obtaining negotiable receipt

Negotia-
tion of
receipt
for mort-
gaged
goods

76. Any person who-

- (a) deposits goods to which he has no title, or upon which there is a lien or mortgage;
- (b) takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of lien or mortgage,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding seven year or to a fine not exceeding ten million shillings.

Obstruc-
ting a
ware-
house
inspector

77. Any person who obstructs the warehouse inspector or any other authorized person in the exercise of the power conferred upon him by this Act or who neglects or refuses to produce to the warehouse inspector or any authorized person any books, records, information or anything which the inspector or any other authorized person may request to be produced for inspection, commits an offence and shall be liable on conviction to imprisonment for three months or to a fine not exceeding one million shillings or to both.

General
penalty

78. Any person who commits any offence against any of the provisions of this Act, to which no specific penalty is provided shall be liable on conviction for every such offence to imprisonment for a term not exceeding three months or to a fine not exceeding five hundred thousand shillings or to both.

PART IX

MISCELLANEOUS PROVISIONS

Powers
to make
Regula-
tions

79.-(1) The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and may, in particular make regulations-

- (a) prescribing the procedures and limits of negotiation of a negotiable warehouse receipt;
- (b) prescribing a standard format of a warehouse receipt;

- (c) determining the standards or requirements for allowing a warehouse operator to sell or dispose of goods, which are perishable or hazardous;
- (d) determining the manner of keeping depositors goods in a warehouse;
- (e) prescribing the classification of warehouses;
- (f) determining goods which may be commingled in the warehouse receipt;
- (g) ways of recovering the warehouse operator's lien by sale of goods;
- (h) prescribing conditions for the registration of the warehouse;
- (i) prescribing conditions that may be inscribed on the warehouse license;
- (j) prescribing warehouse registration and license application procedure;
- (k) prescribing warehouse registration and license application appeal procedure;
- (l) prescribing the qualifications of the employees that may be employed by a warehouse operator;
- (m) prescribing fees that may be paid for warehouse registration and licensing;
- (n) prescribing for anything which may be prescribed under this Act.

(2) Regulations made pursuant to subsection (1) shall be published in the *Gazette*.

SCHEDULE

(Under Section 4(3))

COMPOSITION, TENURE AND PROCEDURE AT MEETINGS
OF THE BOARD

Compo-
sition of
the
Board

- 1.-(1) The Board shall comprise of -
- (a) the Chairman; and
 - (b) other seven members,
- all of whom shall be appointed by the Minister.
- (2) The persons to be appointed as members of the Board shall comprise of the following-
- (a) one member representing the Ministry responsible for crop marketing;
 - (b) two representatives of the cooperative societies as recommended by the Umbrella Co-operative Society at least one of whom shall be a women;
 - (c) a representative of the organization of Tanzania private farmers;
 - (d) a representative of the Tanzania Bankers Association recommended by the Association;
 - (e) a representative of the Tanzania Insurers Association, recommended by the Association; and
 - (f) a representative of farmers; and
 - (g) one member representing warehouse operator's association or organisation.

(3) A person shall not be qualified to be a member of the Board unless he is of high moral character and proven integrity.

Tenure
of Office

2.-(1) A member of the Board shall hold office for a term of three years and shall be eligible for re-appointment but shall not hold office for more than two consecutive terms.

(2) A member of the Board shall vacate office-

- (a) by resignation;
- (b) on written recommendation of the body which he represents to revoke his nomination;
- (c) upon removal by the Minister on the ground of:

- (i) misconduct, misbehavior or abuse of office;
- (ii) failure to attend three consecutive meetings without reasonable excuse as certified by the Board;
- (iii) inability to perform the functions of that office arising from infirmity of body or mind; and
- (d) on effluxion of term of office.

(3) The Chairman shall hold office for three years but shall be eligible for re-appointment.

(4) The Minister may remove the Chairman from that office on ground of incompetence or abuse of office.

(5) Where a vacancy occurs in the office of a member of the Board, the Minister shall consult the body which recommended that member for the purpose of appointing an alternate member of the member who vacated office.

(6) An alternate member shall assume responsibilities of the outgoing member and enjoy all the privileges until the expiration of the term of office of the member who vacated the office.

3. Members of the Board shall be paid such sitting and other allowances as the Board may, with approval of the Minister, determine.

Remuneration of members of the Board

4.- (1) The Chairman shall convene the first meeting of the Board as soon as is practicable after the appointment of the Board and thereafter the Board shall meet for the transaction of business at times and places that may be decided upon by the Board but the Board shall meet at least once in every four months.

Convening meetings

(2) The Chairman or, in the absence of the Chairman, a member of the Board appointed by the Board to act as Chairperson may at any time call a special meeting of the Board, or shall call a special meeting upon a written request by a majority of the members of the Board.

(3) The Chairman shall preside at all meetings of the Board and in his or her absence the members present may appoint a member from among themselves to preside at that meeting.

5. The quorum at a meeting of the Board shall be five members

Quorum

6. Questions proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and if there is equality of votes the person presiding shall have a casting vote in addition to his deliberative vote.

Making decisions

Disclosu
re of
interest

7.-(1) A member of the Board who has any pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the Board.

(2) A disclosure of interest under sub-paragraph (1) shall be recorded in the minutes of the meeting of the Board and the member making the disclosure shall not in respect of that matter-

- (a) be present during any deliberation on the matter by the Board; and
- (b) take part in the decision-making of the Board on the matter

Co-
option of
persons
to meet-
ings of
Board

8.-(1) The Board may co-opt any person to any meeting of the Board to assist it on any matter if the Board is satisfied such person's qualifications and experience are likely to benefit the Board in making a decision on any particular matter.

(2) A person co-opted to assist the Board under subparagraph (1) is entitled to take part in the proceedings of the Board at the meeting concerning the matter in connection with which he is co-opted, but shall not be entitled to vote or take part in any other proceedings of the Board.

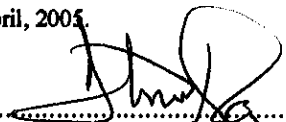
Minutes
of pro-
ceedings

9. The Board shall cause the minutes of its meeting to be recorded kept and the minutes of each meeting shall be confirmed by the Board at the next meeting and signed by the Chairman of the meeting.

Board to
regulate
its own
proce-
dure

10. Subject to the provisions of this Schedule, the Board shall regulate its proceedings.

Passed in the National Assembly on the 20th April, 2005.


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Clerk of the National Assembly