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TWELVETH PARLIAMENT – SECOND SESSION 2018

THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

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REPORT ON THE WAREHOUSE RECEIPT SYSTEM BILL, 2017 (SENATE BILL  
NO.10 OF 2017)

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

OCTOBER 2018

## ABBREVIATIONS

CMA	-	Capital Markets Authority
COG	-	Council of Governors
EAGC	-	Eastern Africa Grain Council
WRS	-	Warehouse Receipts Systems
WDRA	-	Warehousing Development and Regulatory Authority

## EXECUTIVE SUMMARY

The Warehouse Receipt System Bill, 2017 is a Bill sponsored by the Senate Majority Leader. The Senate Bill having been considered and passed in accordance with Senate Standing Orders was forwarded to the National Assembly for consideration. The Senate Bill was read a First Time on 19th March, 2018 in the National Assembly and the same was subsequently forwarded to the Parliamentary Budget Office for further review in accordance with Standing Order 143 and therefore committed to the Departmental Committee on Agriculture and Livestock for consideration in line with the Standing Order 127. The Committee engaged the Ministry of Agriculture and Irrigation and considered the views from the State Department for Trade, Capital Markets Authority (CMA) and Eastern Africa Grain Council (EAGC) and are captured in the body of the report.

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

The Bill further under clause (3-16) provides for the establishment of the warehouse receipt system council as a body corporate, the membership, objects and functions of the council, powers of the council, chief executive officer and other staff of the council, the funds of the council and the manner of reporting on the operations of the council.

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

The Bill also provides for the establishment of a central registry operated by the council, rights and obligations of a warehouse operator, negotiation and transfer of receipts, rights and obligations of a transferors and transferees of a negotiable warehouse receipt and warranties on negotiations of the warehouse receipts.



## 1.1 COMMITTEE MEMBERSHIP

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### 1.1.1 COMMITTEE SECRETARIAT

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Sergeant At arms	-	Faith Makena
Media Officer	-	Deborah Ghati

### 1.1.2 CONSIDERATION OF THE BILL

The Warehouse Receipt System Bill, 2017 (Senate Bill No. 10 of 2017) is a Bill sponsored by the Senate Majority Leader. The Senate Bill having been considered and passed in accordance with Senate Standing Orders was forwarded to the National Assembly for consideration. The Senate Bill was read a First Time on 19<sup>th</sup> March 2018 in the National Assembly and the same was subsequently forwarded to the Parliamentary Budget Office for further review in accordance with Standing Order 143.



## 2.0 BACKGROUND INFORMATION

Warehouse Receipts (WRS) are documents issued by warehouses to depositors against the commodities deposited in the warehouses, for which the warehouse is the deposit bailee. This gives depositors the confidence that their commodities will be stored with guaranteed quality and quantity. These are negotiable instruments that can be traded, sold, exchanged, and used as collateral to support short term financing.

Since the year 2000, many emerging Agricultural economies such as Brazil, Indonesia, India and Ukraine have adopted a warehouse receipts system successfully. However, the concept has not been adopted in Kenya and Africa at large.

## 2.1 INTERNATIONAL COMPARISON

### I. INDIA

The practice of lending against warehouse receipts received major impetus in India post the enactment of the Warehousing (Development and Regulation) Act of 2007, which came into force from 2010.

The 2007 law made way for a separate Warehousing Development and Regulatory Authority (WDRA) with an objective to develop scientific warehousing techniques in India.

The Act introduced a negotiable warehouse receipt system. WDRA bestowed confidence in banks about the warehousing system in India, ironing out worries about the underlying collateral. Banks have started funding against pledge of warehouse receipts in a big way.

### II. Brazil

Brazil's agricultural sector has experienced rapid growth over the past few decades. Between 2001 and 2011, the value of Brazil's annual agricultural exports increased by 400 percent; for comparison, agricultural exports from the United States of America grew by 175 percent over that period.

Until recently, Brazil's agricultural sector lacked effective regulation of warehouses. Warehouses of all types were regulated loosely by a general legal framework created by Decree No. 1102 in 1903. Consequently, the sector has faced a myriad of challenges that affected the agricultural warehouse system in Brazil ranging from; poor location, overcapacity; unsuitable handling design (bag versus bulk); poor quality of installations; inadequate facilities for segregation of cereals by type, grade, age; inadequate

The Commercial Code contains a chapter governing the regulation of warehouses and warehouse receipts and warrants. This chapter applies to any general warehouse where manufacturers, traders, farmers or craftsmen store raw material, merchandise, foodstuffs or manufactured products and that issues negotiable security notes.

The rural code contains specific provisions for agricultural pledges. The farmer can pledge agricultural products, even before harvest, as well as the material used for agricultural production. He or she may keep the pledged goods on his or her premises and entrust the deposit either to the syndicates or agricultural companies that he or she is a member of or to third persons designated in an agreement with the lender.

The legal framework for warehouse receipts in France represents the prototypical civil law regime, developed and institutionalized over the past 150 years in response to the country's longstanding needs as a producer of agricultural commodities.

France's legal system has influenced many civil law systems around the world, and its system for warehouse receipts is mostly consistent with traditional warehouse receipt legislation found in other civil law countries. Obligations for warehouse operators are clearly defined in the Commercial Code, which places a clear duty of care on the warehouse operator and relieves that duty in cases of force majeure.

Notably and consistent with its governance tradition, France has decentralized the authorization and oversight of warehouses and pushed those duties down to the local level of administration.

Most importantly, the law strongly protects creditors and warrant holders in case of debtor default by providing for a public sale after eight days' notice outside court procedures and privileging the creditor over all other creditors for satisfying his claim out of the public sale.



6. We note generally that the two Bills are similar in form and substance, save for the minor variations mentioned in paragraph 7 and 8 below. We further note that the two Bills concern counties and are subject to consideration by both Houses
7. The difference between the Senate Bill and the National Assembly Bill is with regards to the composition of the Council, where the Senate Bill provides for the Principal Secretary for the time being responsible for matters related to finance or a representative to sit in the Council and further provides for the Council of governors to nominate two representatives. Whereas the National Assembly Bill does not provide for the PS-Finance or their representative to sit in the Council and further only provides for one person nominated by the Council of Governors.
8. It is further noted that the Senate Bill provides for the functions of the county executive committee member to among other functions establish and maintain a county registry for the management of warehouse receipt transactions. The functions of county executive committee members are however not provided for in the National Assembly Bill. The Committee may note some functions assigned to the Council have been delegated to the County Executive Committee Member such as the issue, suspension or revocation of registration or licenses issued under the Act. Therefore, Committee may consider on role of the CEC vis-à-vis the Council as the major point of variance in the Senate Bill is the introduction of functions of the CEC and consequential changes in the clauses.

Warehouse Receipt System Bill, 2018 (National Assembly Bill No. 10 Of 2018)	The Warehouse Receipt System Bill, 2017 (Senate Bill No.10 Of 2017)	<i>Draft Proposed Committee Stage Amendments</i>	Proposed Committee Stage Amendments to National assembly Bill	Committee Comments
<p><b>Interpretation</b></p> <p>In this Act, unless the context otherwise requires—</p> <p>“warehouse operator” means a person engaging in the business of storing goods for hire and the issuance of warehouse receipts regardless of whether such goods</p>	<p><b>Interpretation</b></p> <p>2. In this Act, unless the context otherwise requires—</p> <p>“warehouse operator” means a person engaging in the business of storing goods for hire and the issuance of warehouse receipts regardless of whether such goods</p>	<p><b>CLAUSE 2</b></p> <p><b>THAT</b>, Clause 2 of the Bill be amended by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition—</p> <p>“warehouse operator” means a person engaging in the</p>	<p><b>CLAUSE 2</b></p> <p><b>THAT</b>, Clause 2 of the Bill be amended by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition—</p> <p>“warehouse operator” means a person engaging in the business of hiring out space for storing</p>	



<p>(d) entering into contracts;</p> <p>(e) doing or performing such other things or acts as necessary for proper performance of functions of Council and which may fully be done or performed by a body corporate.</p> <p>(3) The Council shall consist of—</p> <p>(a) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;</p> <p>(b) the Principal Secretary for the time being responsible for matters related to finance or a representative;</p> <p>(c) one person nominated by the Council of Governors;</p> <p>(d) the Director-General of Agriculture, and Fisheries Authority or a representative;</p>	<p>(d) entering into contracts; and</p> <p>(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.</p> <p>(3) The Council shall consist of—</p> <p>(a) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;</p> <p>(b) the Principal Secretary for the time being responsible for matters related to finance or a representative;</p> <p>(c) the Principal Secretary</p>	<p>(d) the Principal Secretary for the time being responsible for matters related to finance or a representative;</p> <p>(e) two persons nominated by the Council of Governors;</p> <p>(f) the Director-General of Agriculture and Food Authority or a representative;</p> <p>(g) the chief executive officer of the Council who shall be an <i>ex-officio</i> member;</p> <p>(h) one person nominated by Financial Sectors Regulators Forum;</p> <p>(i) one person nominated by the Kenya Farmers Association;</p> <p>(j) one person nominated by Kenyan members of the Eastern Africa Grain Council;</p> <p>(k) one person nominated by Consumer Federation of Kenya;</p> <p>(l) one person nominated by Kenya Bankers association; and</p> <p>(m) one person nominated by the Kenya Warehouse Operators Association.”</p>	<p>to domestic trade or his representative;”</p> <p>(iii) deleting the words “Food and Fisheries” and substituting therefor the words “and Food, in paragraph (d);</p> <p>(iv) inserting the words, “who shall be an <i>ex-officio</i> member” immediately after the word “Council”, in paragraph (e);</p> <p>(v) deleting the word “East” and substituting with the word “Eastern”, in paragraph (h);</p> <p>(vi) inserting the following paragraphs immediately after paragraph (i)—</p> <p>“(j) one person nominated by Kenya Bankers association; and</p> <p>(k) one person nominated by the Kenya Warehouse</p>
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<p>nce in the agricultural sector and any other relevant sector; and</p> <p>(b) appointed through a competitive and transparent process.</p> <p>(5) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.</p> <p>(6) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p> <p>(7) A decision of the Council shall not be invalid by reason of a vacancy in the Council.</p> <p>(8) The Chairperson and</p>	<p>Africa Grain Council; and</p> <p>(j) one person nominated by Consumer Federation of Kenya.</p> <p>(4) A person appointed as a member of the Council by the Cabinet Secretary under subsection (a) to (i) shall be—</p> <p>(c) persons who have the relevant expertise qualification and experience in the agricultural sector and any other relevant sector; and</p> <p>(d) appointed through a competitive and transparent process.</p> <p>(5) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.</p> <p>(6) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p> <p>(7) A decision of the Council shall not be invalid by reason of a vacancy in the Council.</p> <p>(8) The Chairperson and</p>	<p>(d) fifteen years' experience in any relevant field.</p> <p>(c) in subclause (9), by—</p> <p>(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);</p> <p>(ii) deleting the words "in the opinion of the Council" in paragraph (e);</p> <p>(iii) deleting paragraph (g) and substituting therefor with the following paragraph—</p> <p>"(g) conviction of an offence and sentenced to six months imprisonment</p>	<p>relevant field.</p> <p>(d) in subclause (9), by—</p> <p>(iv) inserting the words, "in contravention of the Public Officer Ethics Act and any other relevant law" immediately after the word "office" in paragraph (c);</p> <p>(v) deleting the words "in the opinion of the Council" in paragraph (e);</p> <p>(vi) deleting paragraph (g) and substituting therefor with the following paragraph—</p> <p>"(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine."</p>	
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<p>member;  (c) for gross misconduct or abuse of office;  (d) if he is absent, without permission of the chairperson of the Council, from three successive meetings of the Council of which he has received notice;  (e) if in the opinion of the Council, he becomes by reason of mental or physical infirmity</p>	<p>has received notice;  (l) if in the opinion of the Council, he becomes by reason of mental or physical infirmity incapable of performing his duties as a member of the Council;  (m) adjudication or admission of bankruptcy; or  (n) conviction for an offence involving moral turpitude or corruption.</p>			
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<p>for agricultural commodities in Kenya;</p> <p>(a) oversee the functioning of the Warehouse Receipt System to ensure the efficiency, effectiveness and integrity of the system;</p> <p>(b) establish and maintain a warehouse receipts system that contributes towards structured trading of agricultural commodities;</p> <p>(c) establish and maintain a central registry for the management of warehouse receipt transactions under the Act;</p> <p>(d) promote the development of a national network of privately or publicly managed warehouses that increase the capacity to issue warehouse receipts;</p> <p>(e) prescribe the standards of warehouse operators, inspectors, and</p>	<p>for agricultural commodities in Kenya;</p> <p>(b) oversee the functioning of the Warehouse Receipt System to ensure the efficiency, effectiveness and integrity of the system;</p> <p>(c) establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities;</p> <p>(d) establish and maintain a central registry for the management of warehouse receipt transactions under the Act;</p> <p>(e) promote the development of a national network of privately or publicly</p>	<p>paragraph immediately after paragraph (k)—</p> <p>(ka) 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;</p> <p>(kb) issue, suspend or revoke registration or licenses issued under the Act;</p>	<p>with the following paragraph—</p> <p>(i) may suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act”</p>	
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<p>failure to comply with any provision of this Act;</p> <p>(j) prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;</p> <p>(k) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties under the Act;</p> <p>(l) advise the Cabinet Secretary on matters relating to agricultural commodity trade</p>	<p>enforcement of commodity standards necessary for the warehouse receipting system;</p> <p>(h) monitor and oversee the issuance, suspension or revocation of registration or licences issued under this Act;</p> <p>(i) prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;</p> <p>(j) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties</p>			
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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



<p>management of the activities of the Council.</p>	<p>appointment as the chief executive officer of the Council, if such person—</p>			
<p>(3) A person qualified for appointment as chief executive officer of the Council, if such person—</p>	<p>(a) holds a university degree from a recognized university in Kenya;</p> <p>(b) has relevant experience in management; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution.</p>			
<p>(a) holds a university degree from a recognized university in Kenya;</p>	<p>(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 <b>three years.</b></p>			
<p>(b) has relevant experience in management; and meets the requirements of Chapter Six of the Constitution.</p>				

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

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

(5) 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.

	<p>licensed warehouse commences the process of dissolution or is dissolved; or (c) if the warehouse operator violates or fails to comply with this Act.</p> <p>(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.</p> <p>(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.</p> <p>(4) A licensee who, without reasonable cause, fails to surrender a licence</p>			
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	for management of a warehouse whose license has been suspended or revoked and commodities stored therein.			
Fees. 18. The Council may charge fees for initial warehouse inspection and fee of warehouse operator's licence.	Fees. 22. The county executive committee member shall charge fees for initial warehouse inspection and issuance of a warehouse operator's licence as may be prescribed by the Council.			
Warehouse Receipts Appeals Committee (1) There is established a Warehouse Receipts Appeals Committee which shall hear and determine appeals relating to— (a) the refusal to grant a licence; (b) the imposition of any conditions on a	Warehouse Receipts Appeals Committee 23. (1) There is established a Warehouse Receipts Appeals Committee which shall hear and determine appeals relating to— (f) the refusal to grant a licence; (g) the imposition of any conditions on a licence; (h) the revocation, suspension or variation	CLAUSE 23  THAT, Clause 23 the Bill be amended in subclause (2) by—  (a) 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	CLAUSE 19  THAT, Clause 19 the Bill be amended in subclause (2) by—  (a) 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.”	

<p>(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication.</p> <p>The term of office of the Warehouse Receipts Appeals Committee shall be for a period of two years.</p> <p>A person who has been aggrieved by any decision of the Council relating to the matters set out in subsection (a) may, within thirty days of being notified of the decision, appeal to the Appeals Committee in the prescribed manner.</p>	<p>may, within thirty days of being notified of the decision, appeal to the Appeals Committee in the prescribed manner.</p>			
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and Food Authority				
<p>Inspection of stored products.</p> <p>The chief executive officer authorized officers of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary.</p>	<p>Inspection of stored products.</p> <p>25. The chief executive officer or authorized officers of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary.</p>	<p><b>CLAUSE 25</b></p> <p><b>THAT</b>, the Bill be amended by deleting Clause 25 and substituting thereof with the following new clause—</p> <p>In 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.</p> <p>(2) The Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.</p>	<p><b>CLAUSE 21</b></p> <p><b>THAT</b>, the Bill be amended by deleting Clause 21 and substituting thereof with the following new clause—</p> <p>Ins 21.(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.</p> <p>(2) The Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.</p>	
<p>Examination of books and records of licensed warehouses and warehouse operators.</p> <p>The chief executive officer through</p>	<p>Examination of books and records of licensed warehouses and warehouse operators.</p> <p>27. The chief executive officer may, through authorized officers, employees or agents examine all</p>	<p><b>CLAUSE 27</b></p> <p><b>THAT</b>, Clause 27 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the words “examine all”.</p>	<p><b>CLAUSE 23</b></p> <p><b>THAT</b>, Clause 23 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry”</p>	



<p>ways of any such issue or negotiation.</p> <p>(4) A certificate of registration assigned by the registrar shall be conclusive evidence of the issue or negotiation of a warehouse receipt.</p> <p>(5) The Cabinet Secretary in consultation with the Council may make regulations to govern the day to day operations of the Central registry.</p>	<p>(5) The Cabinet Secretary in consultation with the Council may make regulations to govern the day to day operations of the Central registry.</p>			
<p>placement of receipts.</p> <p>27. (1) Any loss, theft or destruction of the warehouse receipt shall be reported to the warehouse operator who shall notify the central registry.</p> <p>(2) A warehouse operator may, on request of the holder of a warehouse receipt, issue a warehouse receipt for a lost, stolen or destroyed, where the request accompanied</p>	<p>Replacement of receipts.</p> <p>31. (1) Any loss, theft or destruction of the warehouse receipt shall be reported to the warehouse operator who shall notify the central registry.</p> <p>(2) A warehouse operator may, on the request of the holder of a warehouse receipt, issue a warehouse receipt for a lost, stolen or destroyed, where the request is accompanied by a police report of the loss, theft, or destruction of the receipt.</p> <p>(3) A warehouse operator shall notify the</p>	<p><b>CLAUSE 31</b></p> <p><b>THAT,</b> Clause 31 of the Bill be amended in—</p> <p>(a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “ issue a warehouse replacement receipt”;</p> <p>(b) subclause (3) by deleting the word “ duplicate” and substituting thereof with the word “replacement”; and</p>	<p><b>CLAUSE 27</b></p> <p><b>THAT,</b> Clause 27 the Bill be amended in—</p> <p>(a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “ issue a warehouse replacement receipt”;</p> <p>(b) subclause (3) by deleting the word “ duplicate” and substituting thereof with the word “replacement”; and</p>	

<p>manner stated under section 35 a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.</p>	<p>regarded as duly negotiated in the manner stated under section 35 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.</p>			
<p>Rights and obligations of transferors and transferees of negotiable warehouse receipts.</p> <p>37. (1) The transferee of a negotiable warehouse receipt for value and in good faith shall have the right to compel the transferor of such receipt to endorse the receipt in a case where endorsement is essential for negotiation.</p> <p>(2) In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that warehouse receipt shall not be regarded as negotiated until the transferor endorses it.</p> <p>(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.</p>	<p>Rights and obligations of transferors and transferees of negotiable warehouse receipts.</p> <p>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 in a case where endorsement is essential for negotiation.</p> <p>(2) In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that warehouse receipt shall not be regarded as negotiated until the transferor endorses it.</p> <p>(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.</p>	<p><b>CLAUSE 41</b></p> <p><b>THAT, Clause 41 of the Bill be amended by—</b></p> <p>(a) deleting the words, “ in a case where endorsement is essential for negotiation” appearing in subclause (1);</p> <p>(b) deleting the words “In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting with the letter “A” appearing in subclause (2).</p>	<p><b>CLAUSE 37</b></p> <p><b>THAT, Clause 37 of the Bill be amended by—</b></p> <p>(a) deleting the words, “ in a case where endorsement is essential for negotiation” in subclause (1);</p> <p>(b) deleting the words “ in a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting with the letter “A” in subclause (2).</p>	



<p>Billings, or to both.</p>			
<p>Issuing of receipts with false information.</p> <p>40. 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 the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on conviction a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or both.</p>	<p>Issuing of receipts with false information.</p> <p>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 one million shillings or to a term of imprisonment not exceeding five years, or both.</p>	<p><b>CLAUSE 44</b></p> <p>THAT the Bill be amended by deleting Clause 44 and substituting thereof with the following new clause—</p> <p>Issuing of receipts with false information. 44. A warehouse operator, who fraudulently issues or fails to disclose such fact, exceeding ten years, or both.</p>	<p><b>CLAUSE 40</b></p> <p>THAT the Bill be amended by deleting Clause 40 and substituting thereof with the following new clause—</p> <p>Issuing of receipts with false information. 40. A warehouse operator, who fraudulently issues or fails to disclose such fact, exceeding ten years, or both.</p>
<p>Unlawful issuing of duplicate receipts</p> <p>45. A warehouse operator or any officer, agent, or</p>	<p>Unlawful issuing of duplicate Receipts</p> <p>45. A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates</p>	<p><b>CLAUSE 45</b></p> <p>THAT, the Bill be amended by deleting Clause 41 and substituting thereof with the following new clause—</p>	<p><b>CLAUSE 41</b></p> <p>THAT, the Bill be amended by deleting Clause 41 and</p>



ceeding six onths, or to th.				
chedule...  orum  2. (1) bject to pparagraph (2), quorum of the eting shall be o thirds of the mbers.  (2) Where re is a vacancy he Council, the orum of the eting shall not less than <b>three</b> mbers.  (3) A ision of the uncil shall not invalid by on only of a ancy among members eof.	Schedule...  <b>Quorum</b>  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 <b>three</b> <b>members</b> .  (3) A decision of the Council shall not be invalid by reason only of a vacancy among the members thereof.	<b>SCHEDULE</b>  THAT, paragraph (2) of the Schedule be amended in sub- paragraph (2) by deleting the word "three" and substituting thereof with the word "seven".	<b>SCHEDULE</b>  THAT, paragraph (2) of the schedule be amended in sub- paragraph (2) by deleting the word "three" and substituting thereof with the word "seven".	

### 3.0 PUBLIC PARTICIPATION

The submissions from the stakeholders, public participation and the subsequent views of the Ministry of Agriculture and Irrigation were captured in the Committee Report on its consideration of the Warehouse Receipt Systems Bill, 2018, (National Assembly Bills No. 2 of 2018). The stakeholders engaged were;

1. Ministry of Agriculture and Irrigation, The Principal Secretary, State Department of Crops Development, Prof. Lesiyampe appeared before the Committee on 15<sup>th</sup> March, 2018;
2. Eastern Africa Grain Council (EAGC) appeared on Friday 3<sup>rd</sup> March, 2018 and presented Memoranda on the same;
3. The Capital Markets Authority (CMA), On 5<sup>th</sup> March, 2018 the Capital Market Authority (CMA) submitted the proposed amendments to the Bill;

6. The Bill if enacted it will offer solution to farmers after harvesting because farmers or traders can deposit a commodity in a certified warehouse and then be issued with a document of title called a warehouse receipt. The farmer or trader can then apply for short-term credit from a participating bank or other financial institution using the warehouse receipt as security for a loan, thus increasing access to finance for farmers.
7. The Bill proposes mechanisms for certification of warehouses and sets up a regulatory institutional framework and further stipulates standards for a warehouse receipt and establishes a central registry where users can confirm the validity of receipts issued.
8. The Bill further provides for the negotiation and transfer of receipts, these being negotiation by endorsement and delivery, the rights acquired by negotiation, rights and obligations of transferors and transferees, among others.
9. If the Bill is enacted and well implemented, it will provide a potential to create a stable warehousing receipt system in the country and address issues of food security in the country.

## **5.0 COMMITTEE RECOMMENDATIONS**

Having considered the Bill as passed by the Senate, the Committee therefore proposes the following amendments in preparation for the Committee of the whole House: -

### **CLAUSE 2**

**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 regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;

### **CLAUSE 3**

**THAT**, clause 3 of the Bill be amended—

(e) in subclause (9), by—

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

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

(ix) 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

THAT, clause 4 of the Bill be amended—

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

(f) by inserting the following new paragraph 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 5

THAT, clause 5 of the Bill be deleted.

#### CLAUSE 9

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



#### CLAUSE 27

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

#### CLAUSE 30

THAT, clause 30 of the Bill be 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

THAT, Clause 31 of the Bill be amended in—

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

#### CLAUSE 32

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

#### CLAUSE 39

THAT, Clause 39 of the Bill be amended by deleting the phrase “section 35 and substituting therefor with the phrase “section 38”.

#### CLAUSE 41

THAT, Clause 41 of the Bill be amended—

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.

**CLAUSE 48**

THAT, clause 48 of the Bill be amended by deleting the word "one" and substituting therefor the word "three".

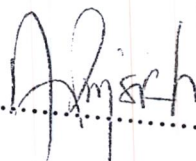
**CLAUSE 50**

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

**SCHEDULE**

THAT, paragraph (2) of the Schedule be amended in sub-paragraph (2) by deleting the word "three" and substituting thereof with the word "seven".

SIGNED.....



DATE.....

9th Oct. 2018

THE HON. ADAN HAJI ALI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

Unlawful issuing  
of duplicate  
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#### CLAUSE 48

THAT, clause 48 of the Bill be amended by deleting the word "one" and substituting therefor the word, "three".

#### CLAUSE 50

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

#### SCHEDULE

THAT, paragraph (2) of the Schedule be amended in sub-paragraph (2) by deleting the word "three" and substituting thereof with the word "seven".

SIGNED..........DATE.....*9th Oct. 2018*.....

THE HON. ADAN HAJI ALI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK



**MINUTES OF THE 41<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON TUESDAY 9<sup>TH</sup> OCTOBER 2018 IN MEDIA CENTRE, PARLIAMENT BUILDINGS AT 10.00 AM.**

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**PRESENT**

- |  |             |
|--|-------------|
| 1. Hon. Adan Haji Ali, MP              | Chairperson |
| 2. Hon. Dr. Daniel Kamuren Tuitoek, MP |             |
| 3. Hon. Simba Arati, MP                |             |
| 4. Hon. John Paul Mwirigi, MP          |             |
| 5. Hon. Adan Haji Yussuf, MP           |             |
| 6. Hon. Francis Munyua Waititu, MP     |             |
| 7. Hon. Yegon Brighton Leonard, MP     |             |
| 8. Hon. Fred Outa, MP                  |             |
| 9. Hon. Joyce Kamene, MP               |             |
| 10. Hon. Maison Leshoomo, MP           |             |

**APOLOGIES**

- |   |                   |
|---|-------------------|
| 1. Hon. Emmanuel Wangwe, MP             | Vice- Chairperson |
| 2. Hon. Silas Kipkoech Tiren, MP        |                   |
| 3. Hon. Florence Mutua, MP              |                   |
| 4. Hon. Gabriel Kago Mukuha, MP         |                   |
| 5. Hon. Dr. John Kanyuithia Mutunga, MP |                   |
| 6. Hon. Ferdinand Wanyonyi, MP          |                   |
| 7. Hon. Janet Jepkemboi Sitienei, MP    |                   |
| 8. Hon. Justus Makokha Murunga, MP      |                   |

**IN- ATTENDANCE**

**COMMITTEE SECRETARIAT**

- |                         |   |                         |
|-------------------------|---|-------------------------|
| 1. Mr. Ahmad Kadhi      | - | First Clerk Assistant   |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant   |
| 3. Mr. Omar Abirahim    | - | Fiscal Analyst          |
| 4. Ms. Lynette Otieno   | - | Legal Counsel           |
| 5. Mr. Alex Mutuku      | - | Sergeant At- Arms       |
| 6. Ms. Rose Ometere     | - | Audio Officer           |
| 7. Ms. Deborah Ghati    | - | Media Relations Officer |

**MIN.NO. DC/ALF/ 139 /2018:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.30am and prayed. He requested all present to make self- introduction for audio recording purposes. The agenda of the day was adopted as *“consideration of the Warehouse Receipt System Bill, 2017” (Senate Bill No. 10 of 2017)*

(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” 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

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 paragraph 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;

CLAUSE 21

THAT, the Bill be amended by deleting clause 21 and substituting therefor the following new clause—

Revocation of licence  
and suspension of  
licence or operations.

17. (1) The Council 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 Council 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 it.

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

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

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

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

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

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

CLAUSE 22

THAT, the Bill be amended by deleting clause 22 and substituting therefor 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

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

#### CLAUSE 30

THAT, clause 30 of the Bill be 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

THAT, Clause 31 of the Bill be 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

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

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.

**CLAUSE 45**

**THAT**, the Bill be amended by deleting Clause 41 and substituting 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.

**CLAUSE 48**

**THAT**, clause 48 of the Bill be amended by deleting the word “one” and substituting therefor the word, “three”.

**CLAUSE 50**

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

**SCHEDULE**

**THAT**, paragraph (2) of the Schedule be amended in sub-paragraph (2) by deleting the word “three” and substituting thereof with the word “seven”.

**MIN.NO. DC/ALF/ 141/2018: ADJOURNMENT**

The Chairperson adjourned the meeting at 12:45pm

Signed.....  


(Chairperson)

Date.....  
9th Oct. 2018

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK			
MEMBERS ATTENDANCE REGISTER			
DATE	9/10/2018	TIME	10.00am
VENUE	MEDIA CENTRE		
AGENDA	CONSIDERATION OF THE WAREHOUSE RECEIPT SYSTEM BILL, 2017 (SENATE BILL)		
	NAME	TITLE	SIGNATURE
1	Hon. Adan Haji Ali, M.P.	Chairman	
2	Hon Emmanuel Wangwe, MP.		
3	Hon. Simba Arati, MP.	member	
4	Hon. Ferdinard Wanyonyi, MP		
5	Hon. Maison Leshoomo, MP.	member	
6	Hon. Florence Mutua, MP		
7	Hon. Silas Kipkoech Tiren, M.P.		
8	Hon. Gabriel Kago Mukuha, M.P.		
9	Hon. John Paul Mwirigi, M.P.	Member	
10	Hon. Adan Haji Yussuf, M.P.	Member	
11	Hon. Janet Jepkemboi Sitienei, M.P.		
12	Hon. Francis Munyua Waititu, M.P.	Member	
13	Hon. Dr. John Kanyuithia Mutunga, M.P.		
14	Hon. Dr. Daniel Kamuren Tuitock, M.P.	Member	
15	Hon. Fred Ouda, M.P.	member	
16	Hon. Joyce Kamene, MP.	Member	
17	Hon. Justus Makokha Murunga, MP.		
18	Hon. Yegon Brighton Leonard, MP	member	