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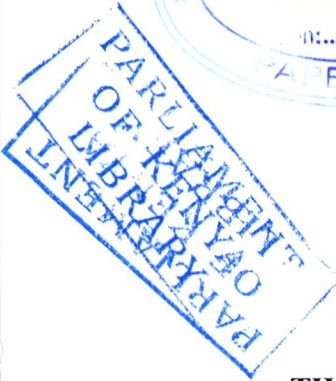
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**6/6/18**



REPUBLIC OF KENYA



*Paper Laid*  
*By Vice Chair - DC*



THE NATIONAL ASSEMBLY

TWELVETH PARLIAMENT – SECOND SESSION 2018

THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

REPORT ON THE WAREHOUSE RECEIPT SYSTEM BILL, 2018

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PARLIAMENT BUILDINGS  
NAIROBI

JUNE, 2018

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## **ABBREVIATIONS**

CMA: Capital Markets Authority

EAGC: Eastern Africa Grain Council

WRS: Warehouse Receipts

## **CHAIRPERSON'S FOREWORD**

This report contains the Committee's proceedings of the consideration of the Warehouse Receipts System Bill, 2018 which was committed to the Committee on **Wednesday 21<sup>st</sup> February, 2018** pursuant to Standing Order 127.

The 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.

The development Warehouse Receipt System (WRS) was initiated by the Ministry of Agriculture and mainly focused on the need to enable the sector address the following challenges;

1. Access to credit through use of agricultural commodities as collateral;
2. Improving post-harvest management of agricultural produce through the progressive improvement of national network of storage facilities/capacity;
3. Stabilize agricultural commodity supply and therefore price fluctuations as farmers do then not have to sell in distress at harvest; and,
4. Provide a link for structured trade in commodities through linkage with Commodities Exchanges

Warehouse Receipt Systems can also cover other commodities. This is the international best practice and is common in many jurisdictions like India, Ethiopia, Rwanda, Uganda etc.

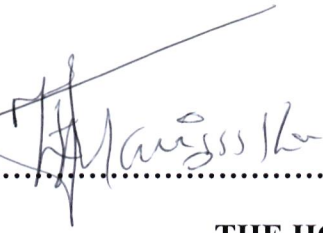
On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Warehouse Receipt Systems Bill, 2018.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the stakeholders and the Ministry of Agriculture and Irrigation for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.



SIGNED.....



DATE.....

30/6/2018

**THE HON. EMMANUEL WANGWE, MP**

**VICE CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK**

## **EXECUTIVE SUMMARY**

The Warehouse Receipts System Bill, 2018 was introduced in the National Assembly by the Leader of the majority Party, National Assembly on **Wednesday 21<sup>st</sup> February, 2018** 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 receipt

## **MANDATE OF THE COMMITTEE**

The Committee on Agriculture and Livestock is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Reports and makes recommendations to the House as often as possible, including recommendation of proposed legislation.

## 1.1.0 COMMITTEE MEMBERSHIP

1. Hon. Adan Haji Ali, M.P.
2. Hon. Emmanuel Wangwe, MP.
3. Hon. Florence Mutua, MP.
4. Hon. Maison Leshoomo, MP.
5. Hon. Silas Kipkoech Tiren, M.P.
6. Hon. Ferdinard Wanyonyi, MP
7. Hon. Francis Munyua Waititu, M.P.
8. Hon. Simba Arati, MP.
9. Hon. Dr. John Kanyuithia Mutunga, M.P.
10. Hon. Yegon Brighton Leonard, MP
11. Hon. Gabriel Kago Mukuha, M.P.
12. Hon. John Paul Mwirigi, M.P.
13. Hon. Adan Haji Yussuf, M.P.
14. Hon. Janet Jepkemboi Sitienei, M.P.
15. Hon. Dr. Daniel Kamuren Tuitoek, M.P.
16. Hon. Joyce Kamene, MP.
17. Hon. Fred Ouda, M.P.
18. Hon. Justus Makokha Murunga, MP.

**Chairperson**  
**Vice- Chairperson**

## 1.1.1 COMMITTEE SECRETARIAT

|                       |   |                  |
|-----------------------|---|------------------|
| First Clerk Assistant | - | Ahmad Kadhi      |
| Third Clerk Assistant | - | Nicodemus Maluki |
| Legal Counsel II      | - | Colletah Sigilai |
| Fiscal Analyst        | - | Omar Abdirahim   |
| Research Officer III  | - | Eric Kariuki     |
| Sergeant At arms      | - | Alex Mutuku      |
| Sergeant At arms      | - | Faith Makena     |

## 1.1.2 CONSIDERATION OF THE BILL

The Warehouse Receipt Systems Bill, 2018 , was published on 7<sup>th</sup> February, 2018 and Read a First time on **Wednesday 21<sup>st</sup> February , 2018** and thereafter committed to the Departmental Committee on Agriculture and Livestock for consideration pursuant to Standing Order 127.

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

The Bill 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 further provides for the licensing and inspection of warehouses, application for a licence to operate within the warehouse receipt system, the revocation and suspension of the licence.

In addition, the bill also provides for the establishment of a warehouse receipts appeals committee and matters the committee may determine and confers powers on the cabinet secretary to make regulations on the structure and operation of the committee.

The Bill 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.

Lastly the Bill 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 receipt.

### **1.1.3 SUBMISSION OF MEMORANDA**

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation on Wednesday 27<sup>th</sup> February, 2018 pursuant to Article 118 of the Constitution. The Committee received and consolidated submissions from Ministry of Agriculture and Irrigation, State Department for Trade, Capital Markets Authority (CMA) and Eastern Africa Grain Council (EAGC) whose views and comments are captured and contained in the body of the report.



## **1.0. 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 2000, many emerging Agri-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.

## **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 roughly 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 quality control equipment and discharge facilities, and; lack of suitable access roads and transport facilities among others.

In 2000, Brazil responded and enacted legislation that created a legal framework governing warehouses storing agricultural products. This legislation was followed in 2004 by further legislation, creating the agricultural certificate of deposit (CDA) and agricultural warrant (WA) warehouse receipt instruments for agricultural products.

The regime for agricultural warehouses and agricultural warehouse receipts applies only to “agricultural products, derivatives, sub-products, and wastes of economic value.” Law 9973 of 2000 and its supporting regulations on warehouse requirements and Law 11076 of 2004 that created agricultural warehouse receipts provide for a certification system for agricultural warehouses and state the obligations of agricultural warehouse keepers. In 2001, supporting regulations to Law 9973 provided further detailed requirements related to agricultural storage contracts; responsibilities and duties of warehouse keepers; trade in products similar to those stored; the issue of securities; certification of warehouses; verification of inventories and conditions of storage; the warehouse’s right to retain stored products; and penalties.

Although it is too early to meaningfully gauge the effectiveness of warehouse regulation efforts in Brazil, the legal framework for regulation of agricultural warehouses is comprehensive and promising.

### **III. France**

France is the world’s second largest agricultural producer after the United States and Europe’s leading agricultural producer across a wide range of agricultural and livestock products. With respect to Europe’s main production crops, France leads in cereals (including rice), field peas, sugar beets and sunflower seeds. France alone accounts for 23 percent of the European Union’s output in cereals.

French law concerning the regulation of warehouses generally (not only agricultural warehouses) and the issuance of warehouse receipts and warrants is codified in the Commercial Code. These provisions are organized into seven sections: warehouse authorization, assignment and cessation of operation; obligations; responsibilities and guarantees; warehouse operation and supervision; receipts and warrants;

and sanctions. Agricultural warehouses in particular are not treated separately by specific legislation or regulations.

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 largely 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.



## 2.0. ANALYSIS OF THE CLAUSES OF THE WAREHOUSE RECEIPT SYSTEM BILL, 2018

| Clause   | Clause and provision   | Remarks   |
|--|--|---|
| <b>PART I – PRELIMINARY</b>  |  |   |
| 1.   | Provides for a short title and commencement of the Act   | The title of the Act is referenced as “Warehouse Receipt System Act, 2018.  |
| 2.   | Provides for interpretation of terms and phrases used in the Bill  | The terms and phrases in the Bill are clearly defined.  |
| <b>PART II - ESTABLISHMENT OF A WAREHOUSE RECEIPT SYSTEM COUNCIL</b> |  |   |
| 3.   | Provides for establishment of a council known as ‘The Warehouse Receipt System Council’  | <ul style="list-style-type: none"> <li>➤ Under Cl 3(3)(d) remove the fisheries in the phrase ‘Agriculture, Food And Fisheries Authority’ replace with AFA</li> <li>➤ Under Cl 3(3)(g) replace “one person nominated by the Kenya Farmers Association” and replace it with “one person nominated by the apex farmers organization”</li> <li>➤ Under Cl 3(3)(g) remove “one person nominated by the financial sectors regulators forum” and replace it with “one person nominated by the “Capital Markets Authority”</li> </ul> |
| 4.   | Provides for the mandate/function of the Council   | ➤ Under Cl 4(i) replace the word “weighters” with “weighers”  |
| 5.   | Provides for the powers of the council   | ➤ Powers of the council is well defined without prejudice.  |
| 6.   | Provides for the conduct of the affairs of the council   | ➤ The conduct of business of the council will be in accordance with the schedule 6.   |
| 7.   | Provides for the remuneration of members of the council  | ➤ The procedure for remunerating the members of the council is clearly defined  |
| 8.   | Provides for the appointment of a chief executive officer who shall be appointed by the council through a competitive process. | ➤ Under Cl 8(4) align initial and additional tenure of office with common practice. Replace the word five (5) years with three (3) years for consistency purpose  |
| 9.   | Provides for recruitment of such other staff of the council as the council may consider necessary for the proper               | ➤ Replace the word “board” with “council”   |

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|  | discharge of its function.   |  |
| 10.  | It allows the council to engage the services of consultant/experts as it may consider necessary to assist the discharge of its function. | ➤ It is a standard practice for any organization to engage the services of a consultant.   |
| 11.  | Provides for the sources of funds for the council  | ➤ The source of funds for the council is well defined.   |
| 12.  | Specify the financial year of the council.   | ➤ The financial year of the council shall be the period of a twelve months ending on the thirtieth June in each year   |
| 13.  | Obligates the council to prepare its annual estimates in accordance with the public finance management act, 2012                         | ➤ It is common practice for every organization to prepare its annual estimate and submit for approval.   |
| 14.  | Obligates the council keep proper audit and records of accounts of the income, expenditure, and liabilities of the council               | ➤ It is important for the council to keep proper audit and records of accounts for transparency and accountability purposes.   |
| 15.  | Obligates the CEO to prepare a report of the operations of the council for every quarter and an annual report for every year.            | ➤ It is common practice for the CEO to report the council every quarter on the operations of the council   |
| <b>PART III - LICENSING AND INSPECTION OF WAREHOUSES</b> |  |  |
| 16.  | Provides for registration, licensing and inspection of warehouses that operate under the warehouse receipt system.                       | ➤ It is important for the council to monitor the operations of the warehouse operators and also use licensing as a source of funds.  |
| 17.  | Provides for the terms for suspension or revocation of a licence or operations by the council.   | ➤ Under Cl 17(2) Replace the “and” between the words “licensee” and “opportunity” with the word “an”   |
| 18.  | Allows the council to charge for initial warehouse inspection and issue of warehouse operators’ licence.                                 | ➤ The council should be allowed to charge for renewal of annual licence to enhance its revenue collection.   |
| 19.  | Provides for the establishment of a warehouse receipts appeals committee   | ➤ The chairperson of the committee should not be the chairperson of the council to reduce conflict of interest in disputes between the council and other parties therefore an independent person appointed |



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|     |  | by the cabinet secretary with experience in dispute resolution should replace the chairperson of the council.   |
| 20. | Obligates the licensed warehouse operators to ensure commodities stored in the warehouse meets the standards published by the Kenya bureau of standards and are weighed using equipment certified in accordance with the Weights and Measures Act. | <ul style="list-style-type: none"> <li>➤ Remove the reference to specific laws which may change over time (Weights and Measures Act Cap 513 is being considered for repeal)</li> <li>➤ The latter part of the clause should read “in accordance with laws related to the weights and measures”</li> <li>➤ Introduce clause 20(3) which will mandate the council to provide guidelines on the minimum qualifications and competencies required of graders and weighers.</li> </ul> |
| 21. | Mandates the CEO or any other authorized officers of the council to inspect agricultural products stored in a licensed warehouse and records relating to the warehouse receipts.   | <ul style="list-style-type: none"> <li>➤ Include appointed council inspectors who shall be gazetted in accordance with regulations under this Act.</li> </ul>   |
| 22. | It obligates the CEO to publish the results of any inspection made under the Act.  | <ul style="list-style-type: none"> <li>➤ It is important to publish the results of any inspection for accountability and transparency purpose.</li> </ul>   |
| 23. | Mandates the CEO of the council, authorized officers of the council or agents to examine the books of accounts of warehouse licensed under this Act.   | <ul style="list-style-type: none"> <li>➤ Insert “insurance contracts, professional indemnities, warehouse receipts registry” after the word “examine” to include key documents central for depositors protection.</li> </ul>  |
| 24. | Mandates the cabinet secretary to make regulations for the better implementation of the Act.   | <ul style="list-style-type: none"> <li>➤ The regulations will guide the implementation of the Act.</li> </ul>   |

#### **PART IV - WAREHOUSE RECEIPTS**

|     |  |  |
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| 25. | Obligates the warehouse operators to issue a warehouse receipt for any agricultural commodity deposited in his or her warehouse. | <ul style="list-style-type: none"> <li>➤ Protects the rights of depositors of agricultural products by ensuring they are issued with a receipt upon delivering goods.</li> </ul> |
| 26. | Provides for the establishment of a central registry operated by the council   | <ul style="list-style-type: none"> <li>➤ It is important to have a central registry where records of all receipts issued by the warehouse operators will be kept.</li> </ul>     |
| 27. | Obligates the warehouse operators to   | <ul style="list-style-type: none"> <li>➤ Under clause 27(3) replace the word “duplicate” with the word “replacement” since it is an</li> </ul>                                   |

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|     | notify the central registry on any loss, theft or destruction of the warehouse receipt upon notification by the holder of the receipt. | international practice to replace receipts and cancel the original. |
| 28. | Gives a duplicate receipt the same standing as the original receipt.   | ➤ Replace the word “duplicate” with a “replacement”                 |

**PART V - OBLIGATIONS AND RIGHTS OF A WAREHOUSE OPERATOR UPON THEIR RECEIPTS**

|     |  |  |
|-----|--|--|
| 29. | Provides for the obligations and rights of a warehouse operator upon their receipts.   | ➤ The rights and obligations of a warehouse are clearly upon taking custody of goods.  |
| 30. | Obligates the warehouse operator to compensate owners of agricultural commodities for wrongful release of goods  | ➤ Protects the rights of receipt holders whose good have been wrongfully released by the warehouse operators.                    |
| 31. | Provides for the separation of goods and fungible goods by warehouse operators.  | ➤ Clearly defines the procedure for handling goods under the possession of a warehouse operator.                                 |
| 32. | Prohibits the attachment by garnishment or otherwise, or be levied on under an execution of goods under the possession of a warehouse operator unless the receipt is surrendered to the warehouse operator | ➤ It is meant to protect the rights of warehouse operators from auctioneers who are pursuing depositors of goods in a warehouse. |
| 33. | Gives a warehouse operator lien right for goods covered by a warehouse receipt or on the proceeds of those goods in his or her possession for all lawful charges   | ➤ The rights of a warehouse operator over goods covered by a warehouse receipt are clearly protected under the clause.           |

**PART VI - NEGOTIATION AND TRANSFER OF RECEIPTS**

|     |  |  |
|-----|--|--|
| 34. | Provides for negotiation and transfer of receipts                            | ➤ Allows for the negotiation and transfer of a warehouse receipt.                          |
| 35. | Gives a negotiated warehouse receipt same status once transferred to another | ➤ it should read 34 for proper cross reference since the clause refers to 35 instead of 34 |



|   |   |  |
|---|---|--|
|   | party.  |  |
| 36.                                       | Provides for the rights acquired after negotiation of warehouse receipts  | ➤ The rights of the person who acquired the receipt are well defined.  |
| 37.                                       | Provides for the rights and obligations of transferors and transferees of a negotiable warehouse receipts.                        | ➤ The rights and obligations of transferors and transferees are clearly defined.   |
| 38.                                       | It provides for warranties on negotiation of the warehouse receipt.   | ➤ It protects the rights of transferors from any prejudice when they negotiate the transfer of a receipt.  |
| <b>PART VII - PENAL PROVISIONS</b>        |   |  |
| 39.                                       | Provides for sanctions in cases where a warehouse operator issues a fraudulent warehouse receipts.                                | <ul style="list-style-type: none"> <li>➤ Provide for fines under the Act in Kenya shillings</li> <li>➤ The procedure for imprisonment and fines are satisfactory.</li> </ul> |
| 40.                                       | Provides for sanctions in cases where a warehouse operator or agent issues a warehouse receipts with false information.           | <ul style="list-style-type: none"> <li>➤ Provide for fines under the Act in Kenya shillings</li> <li>➤ The grounds for punishment are satisfactory.</li> </ul>               |
| 41.                                       | Provides for sanctions in cases where a warehouse operator issues an unlawful issuing of duplicate receipt                        | <ul style="list-style-type: none"> <li>➤ Provide for fines under the Act in Kenya shillings</li> <li>➤ The grounds for punishment are satisfactory.</li> </ul>               |
| 42.                                       | Provides for sanctions for any offence committed for which no other penalty is specified.   | ➤ Provide for fines under the Act in Kenya shillings   |
| <b>PART VII - MISCELLANEOUS PROVISION</b> |   |  |
| 43.                                       | Mandates the cabinet secretary to develop to develop regulations for the carrying into effect the intent and purpose of this Act. | ➤ It is a standard procedure in all Acts.  |

### 3.0 SUBMISSIONS FROM THE STAKEHOLDERS

The submissions from the stakeholders and the subsequent views of the Ministry of Agriculture and Irrigation on some of the clauses of the bill are as presented here below:

#### 3.1 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 and presented on the Bill and submitted the following proposed amendments to this Bill.

| S. No. | Clause and Provision  | Proposed Change  | Justification  |
|--------|---|--|--|
| 1.     | Between Cl. 3 (c) and (d)   | Cl. 3 (d) The Principal Secretary for the time being responsible for matters relating to domestic trade or his representative;<br>and renumber accordingly | Due to the link between WRS and the Commodities Exchange, which is under establishment by the State Department of Trade, It is important that the PS Trade is a member of the WRS Board. |
| 2.     | Cl 3(3) (d)   | Remove the word Fisheries in the phrase "Agriculture, Food and Fisheries Authority"  | Correcting to reflect the current and correct name of AFA  |
| 3.     | Cl. 3(3)(g); one person nominated by the Kenya Farmers Association;     | Cl. 3(3)(g); one person nominated by the apex farmers organization;  | To include representation farmers  |
| 4.     | Cl. 3(3) (f) One person nominated by Financial sectors regulators forum | Cl. 3(3) (f) One person nominated by Capital Markets Authority   | Need for inclusion of the COMEX regulator due to linkage of the latter with WRS  |
| 5.     | New Addition  | Cl.3(3) (j) One person nominated by Kenya Bankers association  | Due to the central role of banks in financing WRS activities   |
| 6.     | New addition  | Cl. 3(3) (k) one person nominated by the Kenya Warehouse operators Association;  | The general interest of Warehouse operators need to be represented at the council through their association  |



|     |   |  |  |
|-----|---|--|--|
| 7.  | Cl.3 (4) A person appointed as a member of the council by the Cabinet secretary under this subsection (a) to (i) shall be   | Rearrange the list of members of the Council in subsection (3) to begin with members appointed by virtue of office, then adjust the phrase “subsection (a) to (i)” to capture only those members nominated by various interest groups for appointment by the Cabinet Secretary | To correct the anomaly in the Bill that that requires specific qualifications for those appointed to the Council by virtue of office   |
| 8.  | Cl. 4 - (i) may suspend operations of warehouse operators, inspectors, weighters or graders operating under the Act;”   | Cl. 4(i) <ul style="list-style-type: none"> <li>• Change “weighters” to “weighers”</li> <li>• Reframe clause to read “may suspend operations of warehouse operators, inspectors, weighers, graders or <b>other service providers operating</b> under the Act</li> </ul>        | Correction of spelling<br><br>Inclusion of “ <b>other service providers</b> ” anticipates the future participation of other value chain actors not specifically provided for under the act |
| 9.  | Cl. 8(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>five</b> years.                               | Cl. 8(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</b> years.   | Align initial and additional tenure of office with common practice   |
| 10. | Cl. 9 The Board shall employ such other staff of the Council as the Board may consider necessary for the proper and efficient discharge of the functions of the Council under the Act, on such terms and conditions of service as | The Council shall employ such other staff as it may consider necessary for the proper and efficient discharge of the functions of the Council under the Act, on such terms and conditions of   | Replacing the word “Board” with “council” and removing repetition of the word council  |

|     |  |  |   |
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|     | the Council may, determine   | service as it may, determine   |   |
| 11. | C. 17(2)   | Replace the “and” between the words “Licensee’ and Opportunity with the word “an”  | Correcting grammar  |
| 12. | Cl. 19 (2) The Warehouse Receipts Appeals Committee shall consist of-<br><br>(a) the Chairperson of the Council; and<br><br>(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication.  | Cl. 19 (2) The Warehouse Receipts Appeals Committee shall consist of-<br><br>(a) A Chairperson appointed by the Cabinet Secretary with experience in dispute resolution<br><br>(b) two other persons appointed by the Cabinet Secretary with experience in dispute resolution. | To reduce conflict of interest in disputes between the council and other parties requires an independent person be to included to replace chair person of the council |
| 13. | Cl 20. (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with the Weights and Measures Act. | (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws related to the Weights and Measures.    | To remove reference to specific laws which may change over time (Weights and Measures Act. CAP 513 is being considered for repeal)                                    |
| 14. | 20. (2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a recognized competent Authority.   | Cl. 20 (2) - Replace “recognised competent Authority” with “mandated institution”<br><br>Cl. 20 (3) the Council shall provide guidelines on the minimum qualifications and   | Refers to institutions mandated under Kenyan laws and not just competent<br><br>To provide minimum qualifications required to uphold quality service and              |



|     |  |   |   |
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|     |  | competencies required of graders and weighers   | integrity of the WRS.   |
| 15. | 21. The Chief Executive Officer or authorized officers of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary  | 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<br><br>(2) the Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act | To specifically prove for appointment of inspectors of the Council, authorized other institutions to undertake inspection services on behalf of the Council and provide a framework for inspection by granting certain powers of access to and inspection of warehouses and warehousing activities            |
| 16. | CI 23 New addition   | Insert the phrase “insurance contracts, professional indemnities, warehouse receipts registry” after the word “examine”   | To include key documents central for depositors protection  |
| 17. | CI 27. (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<br><br>(3) A warehouse operator shall | 2) A warehouse operator may, on the request of the holder of a warehouse receipt, issue a warehouse replacement receipt for a lost, stolen or destroyed, where the request is accompanied by a police report of the loss, theft, or destruction of the receipt<br><br>(3) A warehouse operator shall notify the central registry of the issuance of a replacement” for a warehouse                                    | Duplicate receipts are prone to abuses and the best international practice is to replace receipts and cancel the original. It is recommended to replace all words “Duplicate” with “replacement” To differentiate from original receipt<br><br>Replace word “duplicate” with replacement” due to above reason |

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|     | notify the central registry of the issuance of a duplicate for a warehouse receipt that is lost, stolen or destroyed.   | receipt that is lost, stolen or destroyed.   |   |
| 18. | Cl 28. A duplicate receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.  | Cl 28. A replacement receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.   | Replace word “duplicate” with replacement”  |
| 19. | Cl 35<br><br>A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 35 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.  | A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 34 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.  | Correction to read 34 for proper cross reference  |
| 20. | Cl. 39; Cl. 40; Cl. 41 & Cl, 42   | Insert the word “Kenya” before the word “Shillings” wherever it appears  | To provide for fines under the Act in Kenya shillings   |
| 21. | Cl. 41 A warehouse operator or any officer, agent, or employee of warehouse operator, who issues or facilitates issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same good or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof, the word “duplicate” commits an offence and ..... | Cl. 41 A warehouse operator or any officer, agent, or employee of warehouse operator, who issues or facilitates issuing of a replacement or additional negotiable receipt for goods knowing that a former negotiable receipt for the same good or any part of them is outstanding and not cancelled commits an offence and ..... | To align with the removal Duplicate receipts in previous proposed amendments in Part IV of the Bill |



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|  |  | (also remove the word “Duplicate” and replace with the word “Replacement” in the margin note |  |
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### 3.2 EASTERN AFRICA GRAIN COUNCIL (EAGC)

The Eastern Africa Grain Council (EAGC) is a regional membership organization representing the interests of the grain value chain stakeholders including grain producers/ farmers, traders, processors/millers and other affiliated associations such as the Cereal Growers Association. The Cereal Millers Association as well as other associated organizations including agro input suppliers, inspection agencies, seeds and input suppliers, financial institutions among others.

On Friday 3<sup>rd</sup> March, 2018 the Eastern Africa Grain Council (EAGC) submitted its Memoranda and proposed the following amendments to the Bill:-

| No.                        | Clause          | Proposed amendments  | Justification   |
|----------------------------|-----------------|--|---|
| <b>Part I: Preliminary</b> |                 |  |   |
| 1                          | <b>Clause 2</b> | Insert a definition of Depositor as follows: “a person who deposits agricultural commodities in a licenced warehouse and is issued with a warehouse receipt” | The word “depositor” is used severally in various clauses, hence it’s important to define it  |
| 2                          | <b>Clause 2</b> | Delete the provision for the “owner”.<br><br>The word “owner” should be replaced with the word “depositor”   | Owner is used to refer to depositor of agricultural commodities. It’s advisable to stick with one term (depositor) to avoid misinterpretation of the law. |
| 3                          | <b>Clause 2</b> | Delete the words, “and a plant or other<br><br>facility where the goods are packed, processed or otherwise transformed”                                      | The amended definition clarifies the meaning of a warehouse for the purposes of this Law and the  |

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|   |  | so that it reads as follows: “a licensed building or other protected enclosure in which goods are stored for the purpose of safekeeping, issuance of warehouse receipts or license and includes field warehouses” | warehouse receipts system.   |
| 4 | <b>Clause 3(3)(g) – Establishment of the Warehouse Receipt Systems Council</b> | Replace Kenya Farmers Association with Kenya National Farmers Federation  | The Kenya National Farmers Federation is a more suitable representative of farmers   |
| 5 | <b>Clause 3(3)(h) – Establishment of the Warehouse Receipt Systems Council</b> | Replace the words East African with “Eastern Africa” so that the clause reads as “one person nominated by Kenyan members of the Eastern Africa Grain Council...”  | This is to correct the spelling of the Eastern Africa Grain Council  |
| 6 | <b>Clause 3(9)(c) - Establishment of the Warehouse Receipt Systems Council</b> | Amend to read, “gross misconduct and abuse of office in contravention of the Public Officer Ethics Act and any other relevant law”  | The Public Officers Ethics Act provides guidelines for removal from office due to misconduct and abuse of office, so it is advisable to explicitly refer to it for these matters to avoid misuse of the clause |
| 7 | <b>Clause 3(9)(e) - Establishment of the Warehouse Receipt Systems Council</b> | Delete the phrase “if in the opinion of the Council” in order to read “he becomes by reason of mental or physical infirmity incapable of performing his duties as a member of the Council”                        | Provide clarity in the procedure for vacation of office by members of the Council  |
| 8 | <b>Clause 4 – Functions of the Council</b>                                     | Insert additional function as follows: “may register or de-register warehouse entities under this Act”  | As the regulator of the WRS, the Council should have the function of registering and de-registering warehouses under the Act   |



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| 9  | <b>Clause 8(3)(a) – Chief Executive Officer</b>         | Amend to read, “holds a university degree from a recognized university within or outside Kenya”  | The original clause may discriminate against potentially qualified and competent individuals who have obtained tertiary education outside Kenya  |
| 10 | <b>Clause 8(4) – Chief Executive Officer</b>            | Replace the word five with three, to read, “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 <i>three</i> years” | This is to clarify that the CEO has a term of 3 years renewable once for a term of 3 years   |
| 11 | <b>New Clause</b>                                       | “Any person who intends to operate a warehouse under this Act shall apply for registration in the prescribed form and upon payment of a prescribed fee.” Side margin: registration of warehouses                                       | To provide for procedure for application of a warehouse registration   |
| 12 | <b>Clause 16 (1) – Licensing of warehouse operators</b> | Replace the word “shall” with “may”  | The WRS is supposed to be voluntary for it to run effectively. Making it mandatory for a warehouse operator to apply for registration removes that important element of free choice to participate in the WRS. |
| 13 | <b>Clause 16 (4) – Licensing of warehouse operators</b> | Provide for 3 years licence rather than 12 months (1 year) licence.<br><br>Amend to read, “A license issued under this Part shall be valid for a period of three years from the date of issue and may be renewed subject               | Annual licensing may be too costly for businesses and persons operating warehouses given the number of licensing fees they already have to comply with in the current business regulatory environment. 3       |

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|    |  | to compliance of any set conditions.”   | years allows them to spread the cost of warehouse licensing over a longer period of time, thus reducing business costs.   |
| 14 | <b>Clause 17 – Revocation of licence and suspension of licence or operations</b> | Insert a provision for a warehouse operator to be provided with 30 days to address defects and other issues found in his/her warehouse operations; if he/she fails to do so within 30 days then the licence may be revoked/suspended.   | This prevents abrupt suspension/revocation of licenses and allows the warehouse operator to rectify deficiencies in good time   |
| 15 | <b>Cl 19(2) – Warehouse Receipts Appeals Committee</b>                           | Amend to provide for the following composition of the Appeals Committee:<br><br>a. The Cabinet Secretary responsible for agriculture<br>b. An Advocate of the High Court of Kenya<br>c. 3 other persons independent of the Council with experience in commercial dispute adjudication | This will allow for a more independent and impartial dispute resolution mechanism compared to the one currently provided for in the Bill  |
| 16 | <b>Cl 20(2) Grading and weighing of agricultural products</b>                    | Replace the words “recognised competent” with the word “mandated”   | A competent authority may not necessarily be mandated by a relevant law to conduct a certain function. Therefore, graders shall be certified by a body mandate by law to do so, even if there may exist many other bodies that have the relevant competencies to certify them |



### 3.3 CAPITAL MARKETS AUTHORITY (CMA)

Capital Markets Authority (CMA), is an independent government regulating agency responsible for supervising, licensing and monitoring the activities of market intermediaries, including the stock exchange, and the central depository and settlement system and all the other persons licensed under the Capital Markets Act of Kenya.

On 5<sup>th</sup> March, 2018 the Capital Market Authority (CMA) submitted the following proposed amendments to this proposed Bill.

| CLAUSE              | PROPOSED AMENDMENT  | JUSTIFICATION  |
|---------------------|---|--|
| 1. Clause 2         | In the definition of collateral manager, insert the words “legal, pecuniary or beneficial” before the word “interest”.  | To be specific on the interest being referred to in the definition   |
| 2. Clause 3(3) (f)  | Replace ‘Financial Sectors Regulators Forum’ with ‘Capital Markets Authority’   | The Capital Markets Authority is relevant and competent to the functioning of the Council. Other members including IRA, RBA and SASRA may have minimal or no role at all.  |
| 3. Clause 9         | Substitute ‘Board’ with ‘Council’ and reconstruct the sentence to read,<br><br>“The Council shall employ such other staff as it may consider necessary for the proper efficient discharge of its functions under the Act, on such terms and conditions of service as it may determine.” | The correct reference is Council as the Board is not mentioned anywhere in the Bill  |
| 4. Clause 19(2) (a) | Substitute ‘Chairperson of the Council’ with ‘chairperson who shall be an advocate of not less than seven years standing’.  | Having the Chairperson of the Council being the chairperson of the Appeals Committee amounts to a conflict of the interest since the Chairperson will be involved in the making of decisions which may be subject to appeal. |
| 5. Clause 26        | To insert a new   | This is to ensure that the central registry is   |

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|              | <p>subsection in clause 26 as follows;</p> <p>The central registry shall have the necessary infrastructure to link with a central depository of a commodities exchange licenced by the Capital Markets Authority.</p> | <p>mandated by law to link with a CSD (Central Securities Depository).</p> |
| 6. Clause 37 | <p>To be clear on who determines the negotiability of a warehouse receipt by endorsement.</p>   | <p>To provide clarity in the law.</p>                                      |

### 3.4 MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

The State Department for Trade on 5<sup>th</sup> March, 2018 submitted a written memoranda through the Principal Secretary, Dr. Chris Kiptoo, proposing the following amendments to this Bill:-

#### 1. Clause 2 ( Definitions )

- a. **Proposal:** In the definition of collateral manager, drop agricultural
- b. **Proposal:** “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture in consultation with the Cabinet Secretary for the time being responsible for Trade;
- c. **Proposal :** Commodity means all products, storage of which is determined by regulations to be subject to this Act and includes goods that are packed, processed or otherwise transformed and stored in a warehouse

#### *Justification*



*To be specific on the interest being referred to in the definition*

**2. Clause 3 ( 3) ( Establishment of the Warehouse Receipt Systems Council )**

**Proposal:** Insert (d) The Principal Secretary for the time being responsible for matters relating to Trade.

**Justification**

*Due to the link between WRS and the Commodities Exchange, which is under establishment by the State Department of Trade, It is important that the PS Trade is a member of the WRS Board.*

**3. Clause 4 ( Functions of the Board )**

**Proposal:**

a) drop agricultural

b) drop agricultural

c) it provides one of the roles of WHR council as to “establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities” This has a wide spread meaning. Commodities Exchange is a structured trading mechanism and this clause will put the regulation of the exchange under the Warehouse Receipt Council.

f) drop agricultural

(l) drop agricultural

**Justification**

*As the regulator of the WRS, the Council should have the function of registering and de-registering warehouses under the Act*

**4. Clause 21( Inspection of stored products )**

**Proposal:** drop the word ‘agricultural’

**5. Clause 25 (Warehouse Receipts)**

**Proposal:**

(h) drop the word ‘agricultural’

(i) drop the word ‘agricultural’

**6. Clause 30 ( Wrongful Release of Goods )**

**Proposal:** drop the word 'agricultural'

**Justification**

**7. Clause 31 ( 1 ) ( 2)( Separation of goods and tangible goods )**

**Proposal: Drop the word 'agricultural'**

#### **4.0 COMMITTEE OBSERVATIONS**

Having considered the Bill, the Committee observed that:

1. The Bill if enacted it will reduce the pressure on the farmer to sell immediately after a harvest when prices are normally low and while the commodity is in the warehouse, the depositor can monitor the prices and sell when it is favorable.
2. The Bill will also drastically reduce post-harvest losses as the storage and care of the commodity is transferred to certified warehouses equipped with appropriate facilities and expertise to ensure quality and quantity is maintained.
3. 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.
4. 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.
5. 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.

6. 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 and the proposed amendments by the stakeholders the Committee adopted the following amendments in readiness 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 be amended —

- a) by inserting the following new paragraphs—
  - i) immediately before paragraph (a)  
“(a) a chairperson, who shall be appointed by the President subject to subsection (5);
  - ii) immediately after paragraph (c)  
“the Principal Secretary for the time being responsible for matters relating to domestic trade or his representative;”
  - iii) immediately after paragraph (i)  
“j) one person nominated by Kenya Bankers association
  - (k) one person nominated by the Kenya Warehouse operators Association;”
- b) in paragraph (d) by deleting the word “Fisheries”;
- c) in paragraph (e) by inserting the words, “ who shall be an *ex-officio* member” immediately after the word “Council”
- d) in paragraph (h) by deleting the word “East” and substituting with the word “Eastern”
- e) by deleting subsection 5 and substituting thereof with;  
“(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 any relevant field; and
  - (d) fifteen years experience in any relevant field.”
- f) in subsection (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 “if in the opinion of the Council” in paragraph (e);
  - iii) deleting paragraph (g) and substituting with—
    - (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 deleting paragraph (i) and substituting thereof with —
  - (i) may suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act”

#### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended—

- (a) in subsection 3 by deleting paragraph (a) and substituting therefor the following new paragraph—
 

“(a) holds a university degree from a university recognized in Kenya”
- c) in subsection 4 by deleting the word “five” immediately after the words “further term of” and substituting with the word “three”.”

#### **CLAUSE 9**

**THAT** clause 9 of the Bill be amended by deleting the word “Board” and substituting with the word “Council”.

#### **CLAUSE 15**

**THAT** clause 15 of the Bill be amended in sub-section 5 by inserting the word “annual” immediately before the word “report”.

## CLAUSE 17

THAT clause 17 the Bill be amended by deleting the word “and” immediately after the word “opportunity” and substituting thereof with the word “an”

## CLAUSE 19

THAT clause 19 the Bill be amended in sub-section (2) by—

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

## CLAUSE 20

THAT the Bill be amended by deleting clause 20 and substituting thereof with the following new clause

Grading and Weighing of agricultural products.

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

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

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

## CLAUSE 21

THAT the Bill be amended by deleting clause 21 and substituting thereof with the following new clause

Inspection of stored products

(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.

(2) the Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.



### **CLAUSE 23**

**THAT** clause 23 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the word “examine”

### **CLAUSE 26**

**THAT clause 26 of** the Bill be amended by—

- a) inserting the following new subsection immediately after subsection (1)—  
“(2) The central registry shall have the necessary infrastructure to link with a central depository of a commodities exchange licenced by the Capital Markets Authority.”

### **CLAUSE 27**

**THAT** clause 27 the Bill be amended in —

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

### **CLAUSE 28**

**THAT** clause 28 the Bill be amended by deleting the word “ duplicate” and substituting with the word, “ replacement”.

### **CLAUSE 35**

**THAT** the Bill be amended in clause 35 by deleting the number “(35)” appearing after the word “section” and substituting therefor with the number “(34)”.

### **CLAUSE 37**

**THAT** clause 37 of the Bill be amended by—

- a) deleting the words, “ in a case where endorsement is essential for negotiation” at the end of subsection (1).
- b) In subsection (2) by the deleting the words “ in a case where it is essential that a warehouse receipt should be endorsed before it is transferred” and substituting with the article “A”.

### **CLAUSE 39**

**THAT** the Bill be amended by deleting clause 39 and substituting thereof with the following new clause—

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

#### **CLAUSE 40**

**THAT** the Bill be amended by deleting clause 40 and substituting thereof with the following new clause—

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

#### **CLAUSE 41**

**THAT** the Bill be amended by deleting clause 41 and substituting thereof with the following new clause—

“(41) 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 42**

**THAT** clause 42 the Bill be amended by deleting the word “one” and substituting with the word, “three”.

#### **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.....25/06/2018.....

**THE HON. EMMANUEL WANGWE, MP**

**VICE CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK**



**MINUTES OF THE 13<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON THURSDAY 15<sup>TH</sup> MARCH, 2018 IN THE CONTINENTAL HOUSE, COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, PARLIAMENT BUILDINGS AT 10.00AM**

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**PRESENT**

1. Hon. Emmanuel Wangwe, MP. Vice- Chairperson
2. Hon. Ferdinand Wanyonyi, MP
3. Hon. Simba Arati, MP.
4. Hon. Silas Kipkoech Tiren, M.P.
5. Hon. Dr. Daniel Kamuren Tuitoek, M.P.
6. Hon. Dr. John Kanyuthia Mutunga, M.P.
7. Hon. John Paul Mwirigi, M.P.
8. Hon. Gabriel Kago Mukuha, M.P.
9. Hon. Adan Haji Yussuf, M.P.
10. Hon. Yegon Brighton Leonard, MP
11. Hon. Janet Jepkemboi Sitienei, M.P.

**APOLOGIES**

1. Hon. Adan Haji Ali, M.P. Chairperson
2. Hon. Florence Mutua, MP.
3. Hon. Maison Leshoomo, MP.
4. Hon. Francis Munyua Waititu, M.P.
5. Hon. Justus Makokha Murunga, MP.
6. Hon. Joyce Kamene, MP.
7. Hon. Fred Ouda, M.P.

**IN- ATTENDANCE**

**COMMITTEE SECRETARIAT**

1. Mr. Ahmad Kadhi - First Clerk Assistant
2. Mr. Nicodemus Maluki - Third Clerk Assistant
3. Ms. Colletah Sigilai - Legal Counsel
4. Mr. Omar Abdirahim - Fiscal Analyst
5. Ms. Rose Ometere - Audio Officer
6. Ms. Faith Makena - Sergeant At – Arms

**MINISTRY OF AGRICULTURE AND IRRIGATION**

1. - Principal Secretary Crop
2. Mr. John Mwaniki - Director Policy
3. Grace Agili - Deputy Director

**MIN.NO. DC/ALF/ 056 /2018: PRELIMINARIES**

The Vice - Chairperson called the meeting to order at 10.30 am and prayed. He then requested all present to make self-introduction. The agenda of the day was introduced as follows:

1. Consideration of the Irrigation Bill, 2017
2. Consideration of the Warehouse System Receipt Bill, 2018

**MIN. NO. DC/ALF/057 /2018 – CONSIDERATION OF THE IRRIGATION BILL, 2017**

This agenda item was deferred to Tuesday 20<sup>th</sup> March, 2018 at 10.00am to allow the new Principal Secretary, Prof. Fred Sigor familiarize himself with the said Bill. The secretariat was requested to communicate the same to the ministry for concurrence.

**MIN.NO.DC/ALF/058/2018: CONSIDERATION OF THE WAREHOUSE RECEIPT SYSTEM BILL, 2018**

The Principal Secretary State Department for Crop Development, Dr.Richard L. Lesiyampe, PhD, CBS appeared before the Committee and presented as follows:-

| <b>S. No.</b> | <b>Clause and Provision</b>   | <b>Proposed Change</b>   | <b>Reason</b>  |
|---------------|---|--|--|
| 1.            | Between Cl. 3 (c) and (d)   | Cl. 3 (d) The Principal Secretary for the time being responsible for matters relating to domestic trade or his representative;<br>and renumber accordingly | Due to the link between WRS and the Commodities Exchange, which is under establishment by the State Department of Trade, It is important that the PS Trade is a member of the WRS Board. |
| 2.            | Cl 3(3) (d)   | Remove the word Fisheries in the phrase “Agriculture, Food and Fisheries Authority”  | Correcting to reflect the current and correct name of AFA  |
| 3.            | Cl. 3(3)(g); one person nominated by the Kenya Farmers Association;     | Cl. 3(3)(g); one person nominated by the apex farmers organization;  | To include representation of farmers   |
| 4.            | Cl. 3(3) (f) One person nominated by Financial sectors regulators forum | Cl. 3(3) (f) One person nominated by Capital Markets Authority   | Need for inclusion of the COMEX regulator due to linkage of the latter with WRS  |
| 5.            | New Addition  | Cl.3(3) (j) One person nominated by Kenya Bankers association  | Due to the central role of banks in financing WRS activities   |
| 6.            | New addition  | Cl. 3(3) (k) one person nominated by the Kenya Warehouse operators Association;  | The general interest of Warehouse operators need to be represented at the council through their  |



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|     |   |  | association  |
| 7.  | Cl.3 (4) A person appointed as a member of the council by the Cabinet secretary under this subsection (a) to (i) shall be   | Rearrange the list of members of the Council in subsection (3) to begin with members appointed by virtue of office, then adjust the phrase “subsection (a) to (i)” to capture only those members nominated by various interest groups for appointment by the Cabinet Secretary | To correct the anomaly in the Bill that that requires specific qualifications for those appointed to the Council by virtue of office   |
| 8.  | Cl. 4 - (i) may suspend operations of warehouse operators, inspectors, weighters or graders operating under the Act;”   | Cl. 4(i) <ul style="list-style-type: none"> <li>• Change “weighters” to “weighers”</li> <li>• Reframe clause to read “may suspend operations of warehouse operators, inspectors, weighers, graders or <b>other service providers operating</b> under the Act</li> </ul>        | Correction of spelling<br><br>Inclusion of “ <b>other service providers</b> ” anticipates the future participation of other value chain actors not specifically provided for under the act |
| 9.  | Cl. 8(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>five</b> years.                                   | Cl. 8(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</b> years.   | Align initial and additional tenure of office with common practice   |
| 10. | Cl. 9 The Board shall employ such other staff of the Council as the Board may consider necessary for the proper and efficient discharge of the functions of the Council under the Act, on such terms and conditions of service as the | The Council shall employ such other staff as it may consider necessary for the proper and efficient discharge of the functions of the Council under the Act, on such terms and conditions of service as it may, determine  | Replacing the word “Board” with “council” and removing repetition of the word council  |



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|     | Council may, determine   |   |  |
| 11. | C. 17(2)   | Replace the “and” between the words “Licensee’ and Opportunity with the word “an”   | Correcting grammar   |
| 12. | Cl. 19 (2) The Warehouse Receipts Appeals Committee shall consist of-<br>(a) the Chairperson of the Council; and<br>(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication.  | Cl. 19 (2) The Warehouse Receipts Appeals Committee shall consist of-<br>(a) A Chairperson appointed by the Cabinet Secretary with experience in dispute resolution<br><br>(b) two other persons appointed by the Cabinet Secretary with experience in dispute resolution.  | To reduce conflict of interest in disputes between the council and other parties requires an independent person be to included to replace chairperson of the council           |
| 13. | Cl 20. (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with the Weights and Measures Act. | (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws related to the Weights and Measures. | To remove reference to specific laws which may change over time (Weights and Measures Act. CAP 513 is being considered for repeal)   |
| 14. | 20. (2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a recognized competent Authority.   | Cl. 20 (2) - Replace “recognised competent Authority” with “mandated institution”<br><br>Cl. 20 (3) the Council shall provide guidelines on the minimum qualifications and competencies required of graders and weighers  | Refers to institutions mandated under Kenyan laws and not just competent<br><br>To provide minimum qualifications required to uphold quality service and integrity of the WRS. |
| 15. | 21. The Chief Executive Officer or authorized officers   | 21. (1) The Chief Executive Officer, appointed Council Inspectors or authorized officers of the Council may   | To specifically prove for appointment of inspectors of the Council, authorized other   |

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|     | of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary   | inspect any agricultural commodity stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary<br>(2) the Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act   | institutions to undertake inspection services on behalf of the Council and provide a framework for inspection by granting certain powers of access to and inspection of warehouses and warehousing activities  |
| 16. | CI 23 New addition   | Insert the phrase “insurance contracts, professional indemnities, warehouse receipts registry” after the word “examine”   | To include key documents central for depositors protection   |
| 17. | CI 27. (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<br><br>(3) A warehouse operator shall notify the central registry of the issuance of a duplicate for a warehouse receipt that is lost, stolen or destroyed. | 2) A warehouse operator may, on the request of the holder of a warehouse receipt, issue a warehouse replacement receipt for a lost, stolen or destroyed, where the request is accompanied by a police report of the loss, theft, or destruction of the receipt<br><br>(3) A warehouse operator shall notify the central registry of the issuance of a replacement” for a warehouse receipt that is lost, stolen or destroyed. | Duplicate receipts are prone to abuses and the best international practice is to replace receipts and cancel the original. It is recommended to replace all words “Duplicate” with “replacement”<br>To differentiate from original receipt<br><br>Replace word “duplicate” with replacement” due to above reason |
| 18. | CI 28. A duplicate receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator   | CI 28. A replacement receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.  | Replace word “duplicate” with replacement”   |



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|     | any additional liability.  |   |   |
| 19. | <p>Cl 35</p> <p>A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 35 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.</p>  | <p>A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 34 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>Correction to read 34 for proper cross reference</p>   |
| 20. | <p>Cl. 39; Cl. 40; Cl. 41 &amp; Cl, 42</p>   | <p>Insert the word “Kenya” before the word “Shillings” wherever it appears</p>  | <p>To provide for fines under the Act in Kenya shillings</p>  |
| 21. | <p>Cl. 41 A warehouse operator or any officer, agent, or employee of warehouse operator, who issues or facilitates issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same good or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof, the word “duplicate” commits an offence and .....</p> | <p>Cl. 41 A warehouse operator or any officer, agent, or employee of warehouse operator, who issues or facilitates issuing of a replacement or additional negotiable receipt for goods knowing that a former negotiable receipt for the same good or any part of them is outstanding and not cancelled commits an offence and .....</p> <p>(also remove the word “Duplicate” and replace with the word “Replacement” in the margin note</p> | <p>To align with the removal of Duplicate receipts in previous proposed amendments in Part IV of the Bill</p> |



**Committee Observations**

1. There was need to undertake continuous training to all the stakeholders to enhance understanding of the workings of the warehouse systems.
2. The Central Registry will be the nerve center of the warehouse system
3. Agriculture and Food Authority should be represented in the Council
4. The Chief Executive Officer should also be the Secretary to the Council. This is a common practice
5. The Bill should have a provision to protect the local commodities from the imports
6. Registration and verification of farmers should be enhanced.

**MIN.NO. DC/ALF/059 /2018: ADJOURNMENT**

The meeting was adjourned at 12:20pm.

Signed.....

Vice/ (Chairperson)

Date..... 05/06/2018

**MINUTES OF THE 29<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON SUNDAY 20<sup>TH</sup> MAY, 2018 IN ENGLISH POINT MOMBASA AT 10.00AM**

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**PRESENT**

- |  |                   |
|--|-------------------|
| 1. Hon. Adan Haji Ali, M.P.                | Chairperson       |
| 2. Hon. Emmanuel Wangwe, MP.               | Vice- Chairperson |
| 3. Hon. Dr. Daniel Kamuren Tuitoek, M.P.   |                   |
| 4. Hon. Janet Jepkemboi Sitienei, M.P.     |                   |
| 5. Hon. Maison Leshoomo, MP                |                   |
| 6. Hon. Silas Kipkoech Tiren, M.P.         |                   |
| 7. Hon. John Paul Mwirigi, M.P.            |                   |
| 8. Hon. Gabriel Kago Mukuha, M.P           |                   |
| 9. Hon. Justus Makokha Murunga, MP         |                   |
| 10. Hon. Adan Haji Yussuf, M.P.            |                   |
| 11. Hon. Dr. John Kanyuithia Mutunga, M.P. |                   |

**APOLOGIES**

1. Hon. Ferdinand Wanyonyi, MP
2. Hon. Simba Arati, MP.
3. Hon. Florence Mutua, MP.
4. Hon. Yegon Brighton Leonard,MP
5. Hon. Joyce Kamene, MP.
6. Hon. Francis Munyua Waititu, M.P.
7. Hon. Fred Outa, MP

**IN- ATTENDANCE**

**COMMITTEE SECRETARIAT**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 2. Mr. Omar Abirahim    | - | Fiscal Analyst        |
| 3. Ms. Colletah Sigilai | - | Legal Counsel         |
| 4. Ms. Rose Ometere     | - | Audio Officer         |
| 5. Mr. Alex Mutuku      | - | Sergeant At- Arms     |
| 6. Ms. Bishara Jimale   | - | Secretary             |
| 7. Ms. Sharon Aleyo     | - | Office Assistant      |

**MIN.NO. DC/ALF/ 120 /2018: PRELIMINARIES**

The Vice - Chairperson called the meeting to order at 9.30am followed by a prayer from the Hon. Hon. Janet Jepkemboi Sitienei, M.P. The agenda of the meeting was adopted as consideration of the proposed amendments by the stakeholders to the Warehouse Receipt Systems Bill, 2018.

**MIN.NO. DC/ALF/121/2018: CONSIDERATION OF THE PROPOSED AMENDMENTS BY THE STAKEHOLDERS TO THE WAREHOUSE RECEIPT SYSTEMS BILL, 2018**

The Legal Counsel to the Committee took Members through the proposed amendments by the stakeholders and adopted them as follows:-

**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 be amended —

a) by inserting the following new paragraphs—

i) immediately before paragraph (a)

(a) a chairperson, who shall be appointed by the President subject to subsection (5);

ii) immediately after paragraph (c)

“the Principal Secretary for the time being responsible for matters relating to domestic trade or his representative;”

iii) immediately after paragraph (i)

“j) one person nominated by Kenya Bankers association

(k) one person nominated by the Kenya Warehouse operators Association;”

b) in paragraph (d) by deleting the word “Fisheries”;

c) in paragraph (e) by inserting the words, “ who shall be an *ex-officio* member” immediately after the word “Council”

d) in paragraph (h) by deleting the word “East” and substituting with the word “Eastern”

e) by deleting subsection 5 and substituting thereof with;

“(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 any relevant field; and

(d) fifteen years experience in any relevant field.”

f) in subsection (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 “if in the opinion of the Council” in paragraph (e);

iii) deleting paragraph (g) and substituting with—

(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 deleting paragraph (i) and substituting thereof with —

(i) may suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act”

#### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended—

(a) in subsection 3 by deleting paragraph (a) and substituting therefor the following new paragraph—

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

c) in subsection 4 by deleting the word “five” immediately after the words “further term of” and substituting with the word “three”.”

#### **CLAUSE 9**

**THAT** clause 9 of the Bill be amended by deleting the word “Board” and substituting with the word “Council”.

#### **CLAUSE 15**

**THAT** clause 15 of the Bill be amended in sub-section 5 by inserting the word “annual” immediately before the word “report”.

#### **CLAUSE 17**

**THAT** clause 17 the Bill be amended by deleting the word “and” immediately after the word “opportunity” and substituting thereof with the word “an”

#### **CLAUSE 19**

**THAT** clause 19 the Bill be amended in sub-section (2) by—

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

#### **CLAUSE 20**

**THAT** the Bill be amended by deleting clause 20 and substituting thereof with the following new clause –

Grading and Weighing of agricultural products.

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

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

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

#### **CLAUSE 21**

**THAT** the Bill be amended by deleting clause 21 and substituting thereof with the following new clause –

Inspection of stored products

(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.

(2) the Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.

#### **CLAUSE 23**

**THAT** clause 23 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the word “examine”

#### **CLAUSE 26**

THAT clause 26 of the Bill be amended by—

- a) inserting the following new subsection immediately after subsection (1)—  
“(2) The central registry shall have the necessary infrastructure to link with a central depository of a commodities exchange licenced by the Capital Markets Authority.”

**MIN.NO. DC/ALF/ 122 /2018: ADJOURNMENT**

The Chairperson adjourned the meeting at 1.15 pm.

Signed.....  
*[Handwritten Signature]*

Date.....  
*05/06/18* *VICE* (Chairperson)



**MINUTES OF THE 30<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON SUNDAY 20<sup>TH</sup> MAY, 2018 IN ENGLISH POINT MOMBASA AT 2.30PM**

---

**PRESENT**

- |   |                   |
|---|-------------------|
| 1. Hon. Adan Haji Ali, M.P.               | Chairperson       |
| 2. Hon. Emmanuel Wangwe, MP.              | Vice- Chairperson |
| 3. Hon. Dr. Daniel Kamuren Tuitoek, M.P.  |                   |
| 4. Hon. Janet Jepkemboi Sitienei, M.P.    |                   |
| 5. Hon. Maison Leshoomo, MP               |                   |
| 6. Hon. Silas Kipkoech Tiren, M.P.        |                   |
| 7. Hon. John Paul Mwirigi, M.P.           |                   |
| 8. Hon. Gabriel Kago Mukuha, M.P          |                   |
| 9. Hon. Justus Makokha Murunga, MP        |                   |
| 10. Hon. Adan Haji Yussuf, M.P.           |                   |
| 11. Hon. Dr. John Kanyuthia Mutunga, M.P. |                   |

**APOLOGIES**

1. Hon. Ferdinand Wanyonyi, MP
2. Hon. Simba Arati, MP.
3. Hon. Florence Mutua, MP.
4. Hon. Yegon Brighton Leonard,MP
5. Hon. Joyce Kamene, MP.
6. Hon. Francis Munyua Waititu, M.P.
7. Hon. Fred Outa, MP

**IN- ATTENDANCE**

**COMMITTEE SECRETARIAT**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 2. Mr. Omar Abirahim    | - | Fiscal Analyst        |
| 3. Ms. Colletah Sigilai | - | Legal Counsel         |
| 4. Ms. Rose Ometere     | - | Audio Officer         |
| 5. Mr. Alex Mutuku      | - | Sergeant At- Arms     |
| 6. Ms. Bishara Jimale   | - | Secretary             |
| 7. Ms. Sharon Aleyo     | - | Office Assistant      |

**MIN.NO. DC/ALF/ 123 /2018: PRELIMINARIES**

The Vice - Chairperson called the meeting to order at 2.35pm. The Committee continued considering the proposals by the stakeholders on the Warehouse Receipt Systems Bill, 2018.

**MIN.NO. DC/ALF/124 /2018: CONSIDERATION OF THE PROPOSED AMENDMENTS BY THE STAKEHOLDERS TO THE WAREHOUSE RECEIPT SYSTEMS BILL, 2018**

The Committee considered and adopted the amendments as follows:-

**CLAUSE 27**

**THAT** clause 27 the Bill be amended in —

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

**CLAUSE 28**

**THAT** clause 28 the Bill be amended by deleting the word “ duplicate” and substituting with the word, “ replacement”.

**CLAUSE 35**

**THAT** the Bill be amended in clause 35 by deleting the number “(35)” appearing after the word “section” and substituting therefor with the number “(34)”.

**CLAUSE 37**

**THAT** clause 37 of the Bill be amended by—

- a) deleting the words, “ in a case where endorsement is essential for negotiation” at the end of subsection (1).
- b) In subsection (2) by the deleting the words “ in a case where it is essential that a warehouse receipt should be endorsed before it is transferred” and substituting with the article “A”.

**CLAUSE 39**

**THAT** the Bill be amended by deleting clause 39 and substituting thereof with the following new clause—

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

**CLAUSE 40**

**THAT** the Bill be amended by deleting clause 40 and substituting thereof with the following new clause—

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

**CLAUSE 41**

**THAT** the Bill be amended by deleting clause 41 and substituting thereof with the following new clause—

“(41) 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 42**

**THAT** clause 42 the Bill be amended by deleting the word “one” and substituting with the word, “ three”.

**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/ 125 /2018: ADJOURNMENT**

The Chairperson adjourned the meeting at 5.15 pm.

Signed.....  .....

Date..... 05/06/18 Vice (Chairperson) .....

**MINUTES OF THE 34<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON TUESDAY 22<sup>ND</sup> MAY, 2018 IN ENGLISH POINT MOMBASA AT 2.30PM**

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**PRESENT**

- |  |                   |
|--|-------------------|
| 1. Hon. Adan Haji Ali, M.P.              | Chairperson       |
| 2. Hon. Emmanuel Wangwe, MP.             | Vice- Chairperson |
| 3. Hon. Dr. Daniel Kamuren Tuitoek, M.P. |                   |
| 4. Hon. Janet Jepkemboi Sitienei, M.P.   |                   |
| 5. Hon. Maison Leshoomo, MP              |                   |
| 6. Hon. Silas Kipkoech Tiren, M.P.       |                   |
| 7. Hon. John Paul Mwirigi, M.P.          |                   |
| 8. Hon. Gabriel Kago Mukuha, M.P         |                   |
| 9. Hon. Adan Haji Yussuf, M.P.           |                   |

**APOLOGIES**

1. Hon. Ferdinand Wanyonyi, MP
2. Hon. Simba Arati, MP.
3. Hon. Florence Mutua, MP.
4. Hon. Yegon Brighton Leonard,MP
5. Hon. Justus Makokha Murunga, MP
6. Hon. Dr. John Kanyuithia Mutunga, M.P.
7. Hon. Joyce Kamene, MP.
8. Hon. Francis Munyua Waititu, M.P.
9. Hon. Fred Outa, MP

**IN- ATTENDANCE**

**COMMITTEE SECRETARIAT**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 2. Mr. Omar Abirahim    | - | Fiscal Analyst        |
| 3. Ms. Colletah Sigilai | - | Legal Counsel         |
| 4. Ms. Rose Ometere     | - | Audio Officer         |
| 5. Mr. Alex Mutuku      | - | Sergeant At- Arms     |
| 6. Ms. Bishara Jimale   | - | Secretary             |
| 7. Ms. Sharon Aleyo     | - | Office Assistant      |

**MIN.NO. DC/ALF/ 136 /2018: PRELIMINARIES**

The Vice - Chairperson called the meeting to order at 2.40pm and prayed.

**MIN.NO. DC/ALF/137/2018: CONSIDERATION OF COMMITTEE AMENDMENTS TO THE WAREHOUSE RECEIPT SYSTEMS BILL, 2018**

Having considered the Bill and the proposed amendments by the stakeholders the Committee adopted the following amendments in readiness 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 be amended —

- a) by inserting the following new paragraphs—
  - i) immediately before paragraph (a)  
(a) a chairperson, who shall be appointed by the President subject to subsection (5);
  - ii) immediately after paragraph (c)  
“the Principal Secretary for the time being responsible for matters relating to domestic trade or his representative;”
  - iii) immediately after paragraph (i)  
“j) one person nominated by Kenya Bankers association
  - (k) one person nominated by the Kenya Warehouse operators Association;”
- b) in paragraph (d) by deleting the word “Fisheries”;
- c) in paragraph (e) by inserting the words, “ who shall be an *ex-officio* member” immediately after the word “Council”
- d) in paragraph (h) by deleting the word “East” and substituting with the word “Eastern”
- e) by deleting subsection 5 and substituting thereof with;  
“(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 any relevant field; and
  - (d) fifteen years experience in any relevant field.”
- f) in subsection (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 “if in the opinion of the Council” in paragraph (e);
- iii) deleting paragraph (g) and substituting with—
  - (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 deleting paragraph (i) and substituting thereof with —
  - (i) may suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act”

#### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended—

- (a) in subsection 3 by deleting paragraph (a) and substituting therefor the following new paragraph—

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

- c) in subsection 4 by deleting the word “five” immediately after the words “further term of” and substituting with the word “three”.”

#### **CLAUSE 9**

**THAT** clause 9 of the Bill be amended by deleting the word “Board” and substituting with the word “Council”.

#### **CLAUSE 15**

**THAT** clause 15 of the Bill be amended in sub-section 5 by inserting the word “annual” immediately before the word “report”.

#### **CLAUSE 17**

**THAT** clause 17 the Bill be amended by deleting the word “and” immediately after the word “opportunity” and substituting thereof with the word “an”

#### **CLAUSE 19**

**THAT** clause 19 the Bill be amended in sub-section (2) by—

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

**CLAUSE 20**

**THAT** the Bill be amended by deleting clause 20 and substituting thereof with the following new clause

Grading and Weighing of agricultural products. (20) (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws related to the Weights and Measures.  
 (2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a mandated institution.  
 (3) The Council shall provide guidelines on the minimum qualifications and competencies required of graders and weighers.

**CLAUSE 21**

**THAT** the Bill be amended by deleting clause 21 and substituting thereof with the following new clause

Inspection of stored products (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  
 (2) the Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.

**CLAUSE 23**

**THAT** clause 23 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the word “examine”

**CLAUSE 26**

**THAT** clause 26 of the Bill be amended by—

- a) inserting the following new subsection immediately after subsection (1)—  
“(2) The central registry shall have the necessary infrastructure to link with a central depository of a commodities exchange licenced by the Capital Markets Authority.”

## **CLAUSE 27**

**THAT** clause 27 the Bill be amended in —

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

## **CLAUSE 28**

**THAT** clause 28 the Bill be amended by deleting the word “ duplicate” and substituting with the word, “ replacement”.

## **CLAUSE 35**

**THAT** the Bill be amended in clause 35 by deleting the number “(35)” appearing after the word “section” and substituting therefor with the number “(34)”.

## **CLAUSE 37**

**THAT** clause 37 of the Bill be amended by—

- a) deleting the words, “ in a case where endorsement is essential for negotiation” at the end of subsection (1).
- b) In subsection (2) by the deleting the words “ in a case where it is essential that a warehouse receipt should be endorsed before it is transferred” and substituting with the article “A”.

## **CLAUSE 39**

**THAT** the Bill be amended by deleting clause 39 and substituting thereof with the following new clause—

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

## **CLAUSE 40**

**THAT** the Bill be amended by deleting clause 40 and substituting thereof with the following new clause—

“(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 a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on



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

**CLAUSE 41**

**THAT** the Bill be amended by deleting clause 41 and substituting thereof with the following new clause—

“(41) 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 42**

**THAT** clause 42 the Bill be amended by deleting the word “one” and substituting with the word, “ three”.

**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/ 138/2018: ADJOURNMENT**

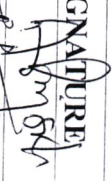







The Chairperson adjourned the meeting at 12.40pm

Signed.....  .....

Date..... 05/06/18 (Vic) Chairperson) .....

**DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK**

**MEMBERS ATTENDANCE REGISTER**









| DATE      | VENUE | AGENDA   | NAME                                   | TITLE         | SIGNATURE   |
|-----------|-------|--|--|---------------|---|
| 21/5/2018 |       |  |  | TIME          | G. ODHAM  |
|           |       | CONSIDERATION OF PROPOSED AMENDMENTS TO THE WAREHOUSE RECEIPT SYSTEMS BILL, 2018 |  |               |   |
| 1         |       |  | Hon. Adan Haji Ali, M.P.               | Chairperson   |  |
| 2         |       |  | Hon. Emmanuel Wangwe, MP.              | Chair         |   |
| 3         |       |  | Hon. Simba Arati, MP.                  |               |   |
| 4         |       |  | Hon. Ferdinand 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.         | Member        |    |
| 9         |       |  | Hon. John Paul Mwirigi, M.P.           | Member        |    |
| 10        |       |  | Hon. Adan Haji Yussuf, M.P.            |               |   |
| 11        |       |  | Hon. Janet Jepkemboi Sitienei, M.P.    | M.P. - Member |    |
| 12        |       |  | Hon. Francis Munyua Waititu, M.P.      |               |   |
| 13        |       |  | Hon. Dr. John Kanyuithia Mutunga, M.P. |               |   |
| 14        |       |  | Hon. Dr. Daniel Kamuren Tuituok, M.P.  | Member        |    |
| 15        |       |  | Hon. Fred Ouda, M.P.                   |               |   |
| 16        |       |  | Hon. Joyce Kamene, MP.                 |               |   |
| 17        |       |  | Hon. Justus Makokha Murunga, MP.       | Member        |    |
| 18        |       |  | Hon. Yegon Brighton Leonard, MP        |               |   |





**DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK**

**MEMBERS ATTENDANCE REGISTER**



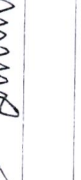
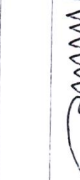





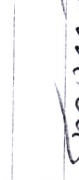








| DATE                                      | VENUE    | AGENDA  | TIME   |
|---|----------|---|--------|
| 21/5/2018                                 |          | CONSIDERATION OF PROPOSED AMENDMENTS TO THE WAREHOUSE RECEIPT SYSTEMS BILL, 2018      | 2.30pm |
| NAME                                      | TITLE    | SIGNATURE   |        |
| 1 Hon. Adan Haji Ali, M.P.                | Chairman |  |        |
| 2 Hon. Emmanuel Wangwe, MP.               | V-Chair  |  |        |
| 3 Hon. Simba Arati, MP.                   |          |   |        |
| 4 Hon. Ferdinand Wanyonyi, MP             |          |   |        |
| 5 Hon. Maison Leshoomo, MP.               |          |    |        |
| 6 Hon. Florence Mutua, MP                 |          |   |        |
| 7 Hon. Silas Kipkoach Tiren, M.P.         |          |   |        |
| 8 Hon. Gabriel Kago Mukuha, M.P.          | Member   |    |        |
| 9 Hon. John Paul Mwirigi, M.P.            | Member   |    |        |
| 10 Hon. Adan Haji Yussuf, M.P.            |          |   |        |
| 11 Hon. Janet Jepkembōi Sitenei, M.P.     | Member   |    |        |
| 12 Hon. Francis Munyua Waititu, M.P.      |          |   |        |
| 13 Hon. Dr. John Kanyuithia Mutunga, M.P. |          |   |        |
| 14 Hon. Dr. Daniel Kamuren Tuitoek, M.P.  |          |   |        |
| 15 Hon. Fred Ouda, M.P.                   |          |   |        |
| 16 Hon. Joyce Kamene, MP.                 |          |   |        |
| 17 Hon. Justus Makokha Murunga, MP.       | Member   |    |        |
| 18 Hon. Yegon Brighton Leonard, MP        |          |    |        |

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**DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK**

**MEMBERS ATTENDANCE REGISTER**

| DATE  | VENUE        | TIME  |
|---|--------------|---|
| 22/5/2018   |              | 2:30pm  |
| <b>AGENDA</b>   |              |   |
| CONSIDERATION OF THE REPORT ON A PETITION TO REVIEW THE CROP ACT NO. 16 OF 2013 TO RECOGNIZE BAMBOO AS SCHEDULED CROP |              |   |
| NAME  | TITLE        | SIGNATURE   |
| 1 Hon. Adan Haji Ali, M.P.  | Chair person |  |
| 2 Hon. Emmanuel Wangwe, MP.   | Member       |  |
| 3 Hon. Simba Arati, MP.   | Member       |   |
| 4 Hon. Ferdinand Wanyonyi, MP   | Member       |    |
| 5 Hon. Maison Leshoomo, MP.   | Member       |    |
| 6 Hon. Florence Mutua, MP   | Member       |    |
| 7 Hon. Silas Kipkoech Tiren, M.P.   | Member       |    |
| 8 Hon. Gabriel Kago Mukuha, M.P.  | Member       |    |
| 9 Hon. John Paul Mwirigi, M.P.  | Member       |    |
| 10 Hon. Adan Haji Yussuf, M.P.  | Member       |    |
| 11 Hon. Janet Jepkemboi Sitienei, M.P.  | Member       |    |
| 12 Hon. Francis Munyua Waititu, M.P.  | Member       |    |
| 13 Hon. Dr. John Kanyuithia Mutunga, M.P.   | Member       |    |
| 14 Hon. Dr. Daniel Kamuren Tuijock, M.P.  | Member       |     |
| 15 Hon. Fred Ouda, M.P.   | Member       |      |
| 16 Hon. Joyce Kamene, MP.   | Member       |      |
| 17 Hon. Justus Makokha Murunga, MP.   | Member       |      |
| 18 Hon. Yegon Brighton Leonard, MP  | Member       |      |

