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THE NATIONAL ASSEMBLY

TWELVETH PARLIAMENT – SECOND SESSION 2018

THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

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

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2018

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ABBREVIATIONS

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

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Warehouse Receipts System Bill, 2017 (Senate Bill No. 10 of 2017) 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 of the Warehouse Receipt System (WRS) was initiated by the Ministry of Agriculture and focused on the need to enable the sector to address the following challenges;

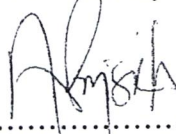
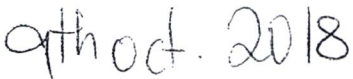
1. Access to credit through use of agricultural commodities as collateral;
2. Improving post-harvest management of agricultural produce through the progressive improvement of national network of storage facilities/capacity;
3. Stabilize agricultural commodity supply and therefore price fluctuations as 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 Honourable Members of the Committee whose dedication and contributions were necessary towards the preparation and production of this report.

SIGNED..........DATE..........

THE HON. ADAN HAJI ALI, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

EXECUTIVE SUMMARY

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

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

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

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

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

1.0 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 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 III	-	Lynette Otieno
Fiscal Analyst	-	Omar Abdirahim
Research Officer III	-	Eric Kariuki
Sergeant At arms	-	Alex Mutuku
Sergeant At arms	-	Faith Makena
Media Officer	-	Deborah Ghati

1.1.2 CONSIDERATION OF THE BILL

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

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 National Assembly Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation on Wednesday 27th 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 tabled.

2.0 BACKGROUND INFORMATION

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

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

2.1 INTERNATIONAL COMPARISON

I. INDIA

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

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

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

II. Brazil

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

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

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 (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 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.

2.2 ANALYSIS OF THE CLAUSES OF THE WAREHOUSE RECEIPT SYSTEM BILL, 2017 (SENATE BILL NO.10 OF 2017) AND WAREHOUSE RECEIPT SYSTEM BILL, 2018

1. The Warehouse Receipt System Bill, 2018 is a Bill sponsored by the Leader of the Majority Party, National Assembly. The Bill was published on 7th February 2018 and read a First Time on 21st February 2018. It was subsequently committed to the Departmental Committee on Agriculture and Livestock for purposes of public participation in accordance with Standing Order 127. The Bill is currently awaiting Second Reading by the House.
2. The Warehouse Receipt System Bill, 2018 seeks to make provision 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. Part II of the Bill provides for the establishment of the Warehouse Receipt System Council as a body corporate, the membership, the objects and functions of the Council, the powers of the Council, the Chief Executive Officer, Corporation Secretary and Staff of the Council, the funds of the Council and the manner of reporting on the operations of the Council.
3. Part III of the National Assembly Bill further provides for the licensing and inspection of warehouses. It provides for the application for a licence to operate within the Warehouse Receipts System, the revocation of licence and suspension of licence or operations. The Bill further empowers the Cabinet Secretary to in consultation with the Council make regulations to provide for management of a warehouse whose license has been suspended or revoked and commodities stored therein.
4. **The Warehouse Receipt System Bill, 2017** is a Bill sponsored by the Senate Majority Leader. The Senate Bill having been considered and passed in accordance with Senate Standing Orders was forwarded to the National Assembly for consideration. The Senate Bill was read a First Time on 19th March, 2018 in the National Assembly and the same was subsequently forwarded to the Parliamentary Budget Office for further review in accordance with Standing Order 143.
5. The Senate Bill seeks to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities and for this purpose, to provide for the establishment of a Warehouse Receipt System Council to oversee and regulate the implementation of the warehouse receipt system. The Bill further sets out the process of depositing commodities, issuance and transfer of receipt to regulation of activities involving agricultural produce. It also provides for the establishment of the Council and the Warehouse Receipts Appeals Committee which make up the warehouse receipt system.

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

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

<p>warehouse receipts regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;</p>	<p>undergo packaging, processing, substitution or other transformation while in the warehouse;</p>	<p>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;</p>	<p>goods and issuance of warehouse receipts regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;'</p>	
<p>3. (1) There is established a Council to be known as the Warehouse Receipt System Council.</p> <p>(2) The Council shall be a body corporate, with perpetual succession and a common seal, and which shall in its corporate name, be capable of—</p> <p>(a) suing and being sued;</p> <p>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;</p> <p>(c) borrowing money or making investments;</p>	<p>Establishment of the Warehouse Receipt Systems Council.</p> <p>3. (1) There is established a Council to be known as the Warehouse Receipt System Council.</p> <p>(2) The Council shall be a body corporate, with perpetual succession and a common seal, and which shall in its corporate name, be capable of—</p> <p>(a) suing and being sued;</p> <p>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;</p> <p>(c) borrowing money or making investments;</p>	<p>CLAUSE 3</p> <p>THAT, Clause 3 of the Bill be amended—</p> <p>(a) by deleting sub clause (3) and substituting therefor the following new subclause—</p> <p>(3) The Council shall consist of—</p> <p>(a) a Chairperson, who shall be appointed by the President;</p> <p>(b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;</p> <p>(c) the Principal Secretary for the time being responsible for matters relating to trade or his representative;</p>	<p>THAT, Clause 3 be amended—</p> <p>(b) in subclause (3), by—</p> <p>(i) inserting the following paragraph immediately before paragraph (a)—</p> <p>“(a) a chairperson, who shall be appointed by the President subject to subsection (5);”</p> <p>(ii) inserting the following paragraph immediately after paragraph (b)—</p> <p>“(ba) the Principal Secretary for the time being responsible for matters relating</p>	

<p>(d) entering into contracts;</p> <p>(e) doing or performing such other things or acts necessary for proper performance of functions of Council and which may lawfully be done or performed by a body corporate.</p> <p>(3) The Council shall consist of—</p> <p>(a) the Principal Secretary for the time being responsible for matters related to culture or a representative;</p> <p>(b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;</p> <p>(c) one person nominated by the Council of Governors;</p> <p>(d) the Director-General of Agriculture, and Fisheries and Livestock Authority or a representative;</p>	<p>(d) entering into contracts; and</p> <p>(e) doing or performing such other things or acts necessary for the proper performance of the functions of the Council and which may lawfully be done or performed by a body corporate.</p> <p>(3) The Council shall consist of—</p> <p>(a) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;</p> <p>(b) the Principal Secretary for the time being responsible for matters related to finance or a representative;</p> <p>(c) the Principal Secretary</p>	<p>(d) the Principal Secretary for the time being responsible for matters related to finance or a representative;</p> <p>(e) two persons nominated by the Council of Governors;</p> <p>(f) the Director-General of Agriculture and Food Authority or a representative;</p> <p>(g) the chief executive officer of the Council who shall be an <i>ex-officio</i> member;</p> <p>(h) one person nominated by Financial Sectors Regulators Forum;</p> <p>(i) one person nominated by the Kenya Farmers Association;</p> <p>(j) one person nominated by Kenyan members of the Eastern Africa Grain Council;</p> <p>(k) one person nominated by Consumer Federation of Kenya;</p> <p>(l) one person nominated by Kenya Bankers association; and</p> <p>(m) one person nominated by the Kenya Warehouse Operators Association.”</p>	<p>to domestic trade or his representative;”</p> <p>(iii) deleting the words “Food and Fisheries” and substituting therefor the words “and Food, in paragraph (d);</p> <p>(iv) inserting the words, “who shall be an <i>ex-officio</i> member” immediately after the word “Council”, in paragraph (e);</p> <p>(v) deleting the word “East” and substituting with the word “Eastern”, in paragraph (h);</p> <p>(vi) inserting the following paragraphs immediately after paragraph (i)—</p> <p>“(j) one person nominated by Kenya Bankers association; and</p> <p>(k) one person nominated by the Kenya Warehouse</p>
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<p>(e) the chief executive officer of the Council;</p> <p>(f) one person nominated by Financial Sectors Regulators Forum;</p> <p>(g) one person nominated by the Kenya Farmers Association;</p> <p>(h) one person nominated by Kenyan members of the East African Grain Council; and</p> <p>(i) one person nominated by Consumer Federation of Kenya.</p> <p>(4) A person appointed as a member of the Council by the Cabinet Secretary under subsection (a) to (i) shall be—</p> <p>(a) (a) persons who have the relevant expertise qualification and experie</p>	<p>for the time being responsible for matters related to trade or a representative;</p> <p>(d) two persons nominated by the Council of Governors;</p> <p>(e) the Director-General of Agriculture, Food and Fisheries Authority or a representative;</p> <p>(f) the chief executive officer of the Council;</p> <p>(g) one person nominated by Financial Sectors Regulators Forum;</p> <p>(h) one person nominated by the umbrella body representing farmers in Kenya;</p> <p>(i) one person nominated by Kenyan members of the Eastern</p>	<p>(b) by deleting subclause (5) and substituting thereof with the following subclause—</p> <p>(5) A person shall be qualified for appointment as chairperson of the Board if such a person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;</p> <p>(c) holds relevant academic and professional qualifications including a university degree in any relevant field; and</p>	<p>Operators Association.”</p> <p>(c) by deleting subclause (5) and substituting thereof with the following subclause—</p> <p>“(5) A person shall be qualified for appointment as chairperson of the Board if such a person—</p> <p>(e) is a citizen of Kenya;</p> <p>(f) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution ;</p> <p>(g) holds relevant academic and professional qualifications including a university degree in any relevant field; and</p> <p>(h) fifteen years’ experience in any</p>	
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<p>nce in the agricultural sector and any other relevant sector; and</p> <p>(b) appointed through a competitive and transparent process.</p>	<p>Africa Grain Council; and</p> <p>(j) one person nominated by Consumer Federation of Kenya.</p>	<p>(d) fifteen years' experience in any relevant field.</p>	<p>relevant field.</p>	<p>(d) in subclause (9), by—</p>
<p>(5) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.</p>	<p>(4) A person appointed as a member of the Council by the Cabinet Secretary under subsection (a) to (i) shall be—</p>	<p>(c) in subclause (9), by—</p>	<p>(iv) inserting the words, “in contravention of the Public Officer Ethics Act and any other relevant law” immediately after the word “office” in paragraph (c);</p>	<p>(i) inserting the words, “in contravention of the Public Officer Ethics Act and any other relevant law” immediately after the word “office” in paragraph (c);</p>
<p>(6) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p>	<p>(c) persons who have the relevant expertise qualification and experience in the agricultural sector and any other relevant sector; and</p> <p>(d) appointed through a competitive and transparent process.</p>	<p>(i) deleting the words “ in the opinion of the Council” in paragraph (e);</p> <p>(ii) deleting the words “ in the opinion of the Council” in paragraph (e);</p>	<p>(v) deleting the words “ in the opinion of the Council” in paragraph (e);</p>	<p>(ii) deleting the words “ in the opinion of the Council” in paragraph (e);</p>
<p>(7) A decision of the Council shall not be invalid by reason of a vacancy in the Council.</p>	<p>(5) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.</p>	<p>(iii) deleting paragraph (g) and substituting therefor with the following paragraph—</p>	<p>(vi) deleting paragraph (g) and substituting therefor with the following paragraph—</p>	<p>(vi) deleting paragraph (g) and substituting therefor with the following paragraph—</p>
<p>(8) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p>	<p>(6) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p>	<p>“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”</p>	<p>“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”</p>	<p>“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”</p>
<p>(8) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p>	<p>(7) A decision of the Council shall not be invalid by reason of a vacancy in the Council.</p> <p>(8) The Chairperson and Vice-Chairperson shall be of the opposite gender.</p>	<p>“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”</p>	<p>“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”</p>	<p>“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”</p>

<p>appointed under subsection (3) (e) to (i) shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years.</p> <p>(9) A member of the Council other than the chief executive officer may vacate office—</p> <p>(a) by resignation by letter addressed to the Cabinet Secretary;</p> <p>(b) on the written recommendation of the body which he represents revoking the nomination of the</p>	<p>members of the Council appointed under subsection (3) (e) to (i) shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years.</p> <p>(9) A member of the Council other than the chief executive officer may vacate office—</p> <p>(h) by resignation by letter addressed to the Cabinet Secretary;</p> <p>(i) on the written recommendation of the body which he represents revoking the nomination of the member;</p> <p>(j) for gross misconduct or abuse of office;</p> <p>(k) if he is absent, without permission of the chairperson of the Council, from three successive meetings of the Council of which he</p>	<p>without an option of a fine.”</p>		
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<p>member; (c)for gross misconduct or abuse of office; (d) if he is absent, without permission of the chairperson of the Council, from three successive meetings of the Council of which he has received notice; (e)if in the opinion of the Council, he becomes by reason of mental or physical infirmi</p>	<p>has received notice; (l) if in the opinion of the Council, he becomes by reason of mental or physical infirmity incapable of performing his duties as a member of the Council; (m) adjudication or admission of bankruptcy; or (n) conviction for an offence involving moral turpitude or corruption.</p>			
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<p>ty incapa ble of perfor ming his duties as a memb er of the Counc il; (f) adjudic ation or admiss ion of bankru ptcy; or (g) convic tion for an offenc e involvi ng moral turpitu de or corrup tion.</p>				
<p>Functions of the Council</p> <p>4. The Council shall—</p> <p>(a) facilitate the establishment, maintenance and development of the Warehouse Receipt System</p>	<p>Functions of the Council</p> <p>4. The Council shall—</p> <p>(a) facilitate the establishment, maintenance and development of the Warehouse Receipt System</p>	<p>CLAUSE 4</p> <p>THAT, Clause 4 of the Bill be amended—</p> <p>(a) in paragraph (a) by inserting the word “produced” immediately after the word “commodities”;</p> <p>(b) by inserting the following new</p>	<p>CLAUSE 4</p> <p>THAT, Clause 4 of the Bill be amended—</p> <p>(c) in paragraph (a) by inserting the word “produced” immediately after the word “commodities”;</p> <p>(d) by deleting paragraph (i) and substituting thereof</p>	

<p>agricultural commodities in Kenya;</p> <p>oversee the functioning of the warehouse receipt System to ensure the efficiency, effectiveness and integrity of the system;</p> <p>establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities ;</p> <p>establish and maintain a central registry for the management of warehouse receipt transactions under the Act;</p> <p>promote the development of a national network of privately or publicly managed warehouses that have the capacity to issue warehouse receipts;</p> <p>prescribe the standards of warehouse operators, inspectors, graders and</p>	<p>for agricultural commodities in Kenya;</p> <p>(b) oversee the functioning of the Warehouse Receipt System to ensure the efficiency, effectiveness and integrity of the system;</p> <p>(c) establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities ;</p> <p>(d) establish and maintain a central registry for the management of warehouse receipt transactions under the Act;</p> <p>(e) promote the development of a national network of privately or publicly</p>	<p>paragraph immediately after paragraph (k)—</p> <p>(ka) in accordance with the provision of this Act, suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act for contravention of the Act;</p> <p>(kb) issue, suspend or revoke registration or licenses issued under the Act;</p>	<p>with the following paragraph—</p> <p>(i) may suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act”</p>	
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<p>weighers, and collateral managers, operating under this Act in relation to the care of and responsibility for the stored agricultural commodities and related duties;</p> <p>(g) develop and implement, in conjunction with relevant Government agencies, an efficient commodity grading and weighing system that ensures quantity and quality assurance and facilitate the enforcement of commodity standards necessary for the warehouse receipting system;</p> <p>(h) may issue, suspend or revoke registration or licenses issued under the Act;</p> <p>(i) may suspend operations of warehouse operators, inspectors, weighers or graders operating under the Act, for</p>	<p>managed warehouses that have the capacity to issue warehouse receipts;</p> <p>(f) prescribe the duties of warehouse operators, inspectors, graders and weighers, and collateral managers, operating under this Act in relation to the care of and responsibility for the stored agricultural commodities and related duties;</p> <p>(g) develop and implement, in conjunction with relevant Government agencies, an efficient commodity grading and weighing system that ensures quantity and quality assurance and facilitate the</p>			
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<p>failure to comply with any provision of this Act;</p> <p>prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;</p> <p>(k) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties under the Act;</p> <p>(l) advise the Cabinet Secretary on matters relating to agricultural commodity trade</p>	<p>enforcement of commodity standards necessary for the warehouse receipting system;</p> <p>(h) monitor and oversee the issuance, suspension or revocation of registration or licences issued under this Act;</p> <p>(i) prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;</p> <p>(j) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties</p>			
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and warehousing; and
 (m) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or Regulations made under the Act

- under the Act;
- (k) advise the Cabinet Secretary on matters relating to agricultural commodity trade and warehousing ; and
- (l) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or Regulations made under the Act.

Functions of the county executive committee member.

5. The county executive committee member —

- (a) shall establish and maintain a county registry for the management of warehouse receipt transactions under this Act;
- (b) shall promote the development of a county network of

<p>privately or publicly managed warehouses that have the capacity to issue warehouse receipts;</p> <p>(c) may issue, suspend or revoke registration or licenses issued under this Act;</p> <p>(d) shall enforce the standards prescribed by the Council under this Act;</p> <p>(e) shall ensure the inspection of warehouses in the county;</p> <p>(f) shall promote confidence in and participation of farmers in the respective county in the warehouse receipt system;</p> <p>(g) shall develop and implement strategies to facilitate the utilisation of the warehouse system by smallholder farmers;</p> <p>(h) shall create support mechanisms to facilitate</p>			
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	<p>access to warehouses by all farmers in the respective county; and</p> <p>(i) may carry out any other function necessary or incidental to the implementation of this Act</p>			
<p>Chief Executive Officer</p> <p>8.(1) There shall be a chief executive officer of the Council who shall be appointed by the Council through a competitive recruitment process, on such terms and conditions of service as the Cabinet Secretary may approve.</p> <p>(2) The chief executive officer shall, subject to the direction of the Council, be responsible for the day to day</p>	<p>Chief Executive Officer</p> <p>9. (1) There shall be a chief executive officer of the Council who shall be appointed by the Council through a competitive recruitment process, on such terms and conditions of service as the Cabinet Secretary may approve.</p> <p>(2) The chief executive officer shall, subject to the direction of the Council, be responsible for the day to day management of the activities of the Council.</p> <p>(3) A person is qualified for</p>	<p>CLAUSE 9</p> <p>THAT, Clause 9 of the Bill be amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—</p> <p>“(a) holds a university degree from a university recognized in Kenya.”</p>	<p>CLAUSE 8</p> <p>THAT, Clause 8 of the Bill be amended—</p> <p>(a) in subclause 3 by deleting paragraph (a) and substituting therefor the following new paragraph—</p> <p>“(a) holds a university degree from a university recognized in Kenya”</p> <p>(b) in subclause 4, by deleting the word “five” and substituting with the word “three”.</p>	

<p>management of the activities of the Council.</p> <p>(3) A person qualified for appointment as chief executive officer of the Council, if such person—</p> <p>(a) holds a university degree from a recognized university in Kenya;</p> <p>(b) has relevant experience in management; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution.</p>	<p>appointment as the chief executive officer of the Council, if such person—</p> <p>(a) holds a university degree from a recognized university in Kenya;</p> <p>(b) has relevant experience in management; and</p> <p>(c) meets the requirements of Chapter Six of the Constitution.</p> <p>(4) The chief executive officer shall serve for a term of three years and shall, subject to satisfactory performance, be eligible for re-appointment for a further term of three years.</p>			
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<p>(4) The chief executive officer shall serve for a term of three years and shall, subject to satisfactory performance, be eligible for re-appointment for a further term of five years.</p>				
<p>Reports</p> <p>15. (1) The chief executive officer shall, cause to be prepared a report of the operations of the Council for every quarter and an annual report for every year...</p> <p>(5) The Cabinet Secretary shall, within thirty days after receiving a report, transmit it to the National Assembly.</p>	<p>Reports</p> <p>16. (1) The chief executive officer shall, cause to be prepared a report of the operations of the Council for every quarter and an annual report for every year...</p> <p>(5) The Cabinet Secretary shall, within thirty days after receiving a report, transmit it to the National Assembly.</p>	<p>CLAUSE 16</p> <p>THAT, Clause 16 of the Bill be amended in subclause (5) by inserting the word "annual" immediately before the word "report".</p>	<p>CLAUSE 15</p> <p>THAT, Clause 15 of the Bill be amended in subclause (5) by inserting the word "annual" immediately before the word "report".</p>	
	<p>Licensing of warehouse operators.</p>			

17. (1) A warehouse operator shall apply to the respective county executive committee member for a licence to operate within the Warehouse Receipt System.

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

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

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

(5) Each **county executive committee member** shall furnish the Council with details of a licence issued under subsection (1) within seven days of issuance of the licence.

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

Appeal to the council
 20. A person who is aggrieved by a decision of the county executive committee member may, within thirty days of being notified of the decision, appeal to the Council in the prescribed manner.

Revocation of licence and suspension of licence or operations.

21.(1) The county executive committee member may suspend or revoke a licence—
 (a) if a warehouse operator transfers all or part of his or her control over the licence;
 (b) immediately

<p>licensed warehouse commences the process of dissolution or is dissolved;</p> <p>or</p> <p>(c) if the warehouse operator violates or fails to comply with this Act.</p> <p>(2) The county executive committee member shall before revoking or suspending a licence, inform the licensee of the intended revocation or suspension, in writing, and give the licensee an opportunity to make representations before making a determination.</p> <p>(3) Upon the revocation of a licence, the county executive committee member shall, within fourteen days of the revocation, notify the licensee of the revocation and require the licensee to, within fourteen days of receipt of the notification, surrender the licence to the county executive committee member.</p> <p>(4) A licensee who, without reasonable cause, fails to surrender a licence</p>			
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within the period specified in paragraph (3) commits an offence.

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

(6) Where a licence has been suspended or revoked, the respective county executive committee member shall appoint an independent warehouse manager to operate the warehouse in the interim until the matter is resolved.

(7) The county executive committee member shall furnish the Council with details of a warehouse whose licence has been revoked within seven days of the revocation of a licence by the county executive committee member.

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

(9) The Cabinet Secretary shall in consultation with the Council make regulations to provide

for management of a warehouse whose license has been suspended or revoked and commodities stored therein.

Fees.
18. The Council may charge fees for initial warehouse inspection and fee of warehouse operator's licence.

Fees.
22. The county executive committee member shall charge fees for initial warehouse inspection and issuance of a warehouse operator's licence as may be prescribed by the Council.

Warehouse Receipts Appeals Committee
(1) There is established a Warehouse Receipts Appeals Committee which shall hear and determine appeals relating to—
 (a) the refusal to grant a licence;
 (b) the imposition of any conditions on a

Warehouse Receipts Appeals Committee
23. (1) There is established a Warehouse Receipts Appeals Committee which shall hear and determine appeals relating to—
 (f) the refusal to grant a licence;
 (g) the imposition of any conditions on a licence;
 (h) the revocation, suspension or variation

CLAUSE 23
THAT, Clause 23 the Bill be amended in subclause (2) by—
 (a) deleting paragraph (a) and substituting thereof with the following paragraph—
 (a) a chairperson appointed by the Cabinet Secretary who shall be an advocate of not less than seven years standing and

CLAUSE 19
THAT, Clause 19 the Bill be amended in subclause (2) by—
 (a) deleting paragraph (a) and substituting thereof with the following paragraph—
 “(a) a chairperson appointed by the Cabinet Secretary who shall be an advocate of not less than seven years standing and with experience in dispute resolution.”

<p>licen ce; (c) the revoc ation, suspe nsion or variati on of a licen ce; (d) a decis ion of a ware hous e inspe ctor; (e) any other decis ion of the Coun cil under this Act.</p> <p>(2) The Warehouse Receipts Appeals Committee shall consist of—</p> <p>(a) the Chair perso n of the Coun cil; and</p>	<p>of a licence; (i) a decision of a warehouse inspector; (j) any other decision of the Council under this Act.</p> <p>(2) The Warehouse Receipts Appeals Committee shall consist of—</p> <p>(a) the Chairperso n of the Council; and</p> <p>(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudicati on.</p> <p>(3) The term of office of the Warehouse Receipts Appeals Committee shall be for a period of three years.</p> <p>(4) A person who has been aggrieved by any decision of the Council relating to the matters set out in subsection (1)</p>	<p>with experience in dispute resolution; and</p> <p>(b) deleting the word “ adjudication” in paragraph (b) and substituting thereof with the word “resolution”.</p>	<p>(b) deleting the word “ adjudication” in paragraph (b) and substituting thereof with the word “resolution”.</p>	
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(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication.

may, within thirty days of being notified of the decision, appeal to the Appeals Committee in the prescribed manner.

The term of office of the Warehouse Receipts Appeals Committee shall be for a period of five years.

A person who has been aggrieved by any decision of the Council relating to the matters set out in subsection (b) may, within thirty days of being notified of the decision, appeal to the Appeals Committee in the prescribed manner.

<p>Grading and weighing of agricultural products.</p> <p>20. (1) A licensed warehouse operator shall ensure that the agricultural commodities stored in a licensed warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with the Weights and Measures Act.</p> <p>(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by the Agriculture and Food Authority.</p>	<p>Grading and weighing of agricultural products.</p> <p>24. (1) A licensed warehouse operator shall ensure that the agricultural commodities stored in a licensed warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with the Weights and Measures Act.</p> <p>(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by the Agriculture and Food Authority.</p>	<p>CLAUSE 24</p> <p>THAT, the Bill be amended by deleting Clause 24 and substituting thereof with the following new clause—</p> <p>Gr 24. (1) A licensed warehouse operator shall ensure that the agricultural 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.</p> <p>(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a mandated institution.</p> <p>(3) The Council shall provide guidelines on the minimum qualifications and competencies required of graders and weighers.</p>	<p>CLAUSE 20</p> <p>THAT, the Bill be amended by deleting Clause 20 and substituting thereof with the following new clause—</p> <p>Gr 20. (1) A licensed warehouse operator shall ensure that the agricultural 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.</p> <p>(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a mandated institution.</p> <p>(3) The Council shall provide guidelines on the minimum qualifications and competencies required of graders and weighers.</p>	
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and Food Author ity				
<p>ection of ed products.</p> <p>The chief utive officer authorized ers of the ncil may ect any ultural modities ed in a ised house and rds relating to house ipts where its idered ssary.</p>	<p>Inspection of stored products.</p> <p>25. The chief executive officer or authorized officers of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary.</p>	<p>CLAUSE 25</p> <p>THAT, the Bill be amended by deleting Clause 25 and substituting thereof with the following new clause—</p> <p>In 25.(1) The Chief sp Executive Officer, ec appointed Council tio Inspectors or n authorized officers of of the Council may st inspect any or agricultural ed commodity stored in a pr licensed warehouse od and records relating to uc warehouse receipts ts. where its considered necessary.</p> <p>(2) The Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.</p>	<p>CLAUSE 21</p> <p>THAT, the Bill be amended by deleting Clause 21 and substituting thereof with the following new clause—</p> <p>Ins 21.(1) The Chief pe Executive Officer, cti appointed Council on Inspectors or authorized of officers of the Council sto may inspect any red agricultural commodity pro stored in a licensed du warehouse and records cts relating to warehouse receipts where its considered necessary.</p> <p>(2) The Council shall appoint and gazette inspectors who shall exercise such powers as shall be outlined in accordance with regulations under this Act.</p>	
<p>Examination books and ds of sed houses and house ators.</p> <p>The chief utive officer through</p>	<p>Examination of books and records of licensed warehouses and warehouse operators.</p> <p>27. The chief executive officer may, through authorized officers, employees or agents examine all</p>	<p>CLAUSE 27</p> <p>THAT, Clause 27 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the words “examine all”.</p>	<p>CLAUSE 23</p> <p>THAT, Clause 23 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry”</p>	

<p>authorized officers, employees or agents examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehouse operators working in such warehouses.</p>	<p>books, records, papers, and accounts of warehouses licensed under this Act and of the warehouse operators working in such warehouses.</p>		<p>immediately after the words "examine all".</p>	
<p>Establishment of central registry.</p> <p>26. (1) There is established a Central Registry which shall be operated by the Council.</p> <p>(2) The chief executive officer shall be the Registrar for the purpose of registering any transaction relating to a warehouse receipt issued under the Act.</p> <p>(3) A warehouse receipt issued in accordance with this Act, including any negotiation in respect of it shall be delivered up to the Registrar for registration within fourteen</p>	<p>Establishment of central registry.</p> <p>30. (1) There is established a Central Registry which shall be operated by the Council.</p> <p>(2) The chief executive officer shall be the Registrar for the purpose of registering any transaction relating to a warehouse receipt issued under the Act.</p> <p>(3) A warehouse receipt issued in accordance with this Act, including any negotiation in respect of it shall be delivered up to the Registrar for registration within fourteen days of any such issue or negotiation.</p> <p>(4) A certificate of registration signed by the Registrar shall be conclusive evidence of the issue or negotiation of a warehouse receipt.</p>	<p>CLAUSE 30</p> <p>THAT, Clause 30 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—</p> <p>“(1A) The Central Registry shall have the necessary infrastructure to link with a central depository of a commodities exchange licensed by the Capital Markets Authority.”</p>	<p>CLAUSE 26</p> <p>THAT, Clause 26 of the Bill be amended by inserting the following new subclause immediately after subsection (1)—</p> <p>“(2) The Central Registry shall have the necessary infrastructure to link with a central depository of a commodities exchange licensed by the Capital Markets Authority.”</p>	

<p>ys of any such ue or gotiation.</p> <p>(4) A rtificate of gistration med by the gistrar shall be nclusive dence of the ue or gotiation of a rehouse eipt.</p> <p>(5) The oinet Secretary consultation h the Council y make ulations to ern the day to operations of Central stry.</p>	<p>(5) The Cabinet Secretary in consultation with the Council may make regulations to govern the day to day operations of the Central registry.</p>			
<p>lacement of eipts.</p> <p>27. (1) Any , theft or struction of the arehouse receipt l be reported he warehouse rator who l notify the ral registry.</p> <p>(2) A arehouse ator may, on request of the er of a arehouse ipt, issue a arehouse receipt a lost, stolen destroyed, e the request accompanied</p>	<p>Replacement of receipts.</p> <p>31. (1) Any loss, theft or destruction of the warehouse receipt shall be reported to the warehouse operator who shall notify the central registry.</p> <p>(2) A warehouse operator may, on the request of the holder of a warehouse receipt, issue a warehouse receipt for a lost, stolen or destroyed, where the request is accompanied by a police report of the loss, theft, or destruction of the receipt.</p> <p>(3) A warehouse operator shall notify the</p>	<p>CLAUSE 31</p> <p>THAT, Clause 31 of the Bill be amended in—</p> <p>(a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “ issue a warehouse replacement receipt”;</p> <p>(b) subclause (3) by deleting the word “ duplicate” and substituting thereof with the word “replacement”; and</p>	<p>CLAUSE 27</p> <p>THAT, Clause 27 the Bill be amended in—</p> <p>(a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “ issue a warehouse replacement receipt”;</p> <p>(b) subclause (3) by deleting the word “ duplicate” and substituting thereof with the word “replacement”; and</p>	

<p>by a police report of the loss, theft, or destruction of the receipt.</p> <p>(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.</p> <p>(4) Any person deals presents or deals with the original receipt after a replacement receipt has been issued commits an offence</p>	<p>central registry of the issuance of a duplicate for a warehouse receipt that is lost, stolen or destroyed.</p> <p>(4) Any person deals presents or deals with the original receipt after a replacement receipt has been issued commits an offence.</p>	<p>(c) subclause (4), by deleting the word “deals” immediately after the word “person” and substituting therefor the word “who”.</p>	<p>(c) subsection (4), by deleting the word “deals” immediately after the word “person” and substituting therefor the word “who”.</p>	
<p>Warranty and standing of duplicate receipts.</p> <p>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.</p>	<p>Warranty and standing of duplicate receipts.</p> <p>32. 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.</p>	<p>CLAUSE 32</p> <p>THAT, Clause 32 of the Bill be amended by deleting the word “duplicate” and substituting with the word, “replacement”.</p>	<p>CLAUSE 28</p> <p>THAT, Clause 28 of the Bill be amended by deleting the word “duplicate” and substituting with the word, “replacement”.</p>	
<p>Persons capable of negotiating a Warehouse Receipt.</p> <p>35. A warehouse receipt shall be regarded as duly negotiated in the</p>	<p>Persons capable of negotiating a Warehouse Receipt.</p> <p>39. A warehouse receipt shall be</p>	<p>CLAUSE 39</p> <p>THAT, Clause 39 of the Bill be amended by deleting the phrase “section 35 and substituting therefor with the phrase “section 38”.</p>	<p>CLAUSE 35</p> <p>THAT, Clause 35 of the Bill be amended by deleting the phrase “section 35 and substituting therefor with the phrase “section 34”.</p>	

<p>anner stated der section 35 a person who chases it in d faith, for ue without ice of any ect or claim to by any other son.</p>	<p>regarded as duly negotiated in the manner stated under section 35 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.</p>			
<p>hts and ligations of sferors and sferees of otiable ehouse eipts. 37. (1) The sferee of a otiable ehouse receipt value and in d faith shall e the right to pel the sferor of such eipt to endorse receipt in a e where orsement is ntial for otiation. (2) In a case re it is ntial that a ehouse receipt uld be orsed before it ansferred, that ehouse receipt l not be arded as otiated until transferor orses it. (3) The orsement of a ehouse receipt</p>	<p>Rights and obligations of transferors and transferees of negotiable warehouse receipts. 41. (1) The transferee of a negotiable warehouse receipt for value and in good faith shall have the right to compel the transferor of such receipt to endorse the receipt in a case where endorsement is essential for negotiation. (2) In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that warehouse receipt shall not be regarded as negotiated until the transferor endorses it. (3) The endorsement of a warehouse receipt in good faith shall not make the transferee liable for any default or fraudulent acts on the receipt occasioned by the warehouse operator or previous endorsers.</p>	<p>CLAUSE 41 THAT, Clause 41 of the Bill be amended by— (a) deleting the words, “ in a case where endorsement is essential for negotiation” appearing in subclause (1); (b) deleting the words “In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting with the letter “A” appearing in subclause (2).</p>	<p>CLAUSE 37 THAT, Clause 37 of the Bill be amended by— (a) deleting the words, “ in a case where endorsement is essential for negotiation” in subclause (1); (b) deleting the words “ in a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting with the letter “A” in subclause (2).</p>	

<p>in good faith shall not make the transferee liable for any default or fraudulent acts on the receipt occasioned by the warehouse operator or previous endorsers.</p>				
<p>Issuing of fraudulent warehouse receipts.</p> <p>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 five years or a fine not exceeding one million</p>	<p>Issuing of fraudulent warehouse receipts.</p> <p>43. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or a fine not exceeding one million shillings, or to both.</p>	<p>CLAUSE 43</p> <p>THAT the Bill be amended by deleting Clause 43 and substituting thereof with the following new clause—</p> <p>Issuing of fraudulent warehouse receipts.</p> <p>43. A warehouse operator, who is issued have not actual control conviction to million Kenya</p>	<p>CLAUSE 39</p> <p>THAT the Bill be amended by deleting Clause 39 and substituting thereof with the following new clause—</p> <p>Issuing of fraudulent warehouse receipts.</p> <p>39. A warehouse operator, who is issued have not actual control conviction to a million Kenya</p>	

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

<p>employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word “Duplicate”, commits an offence and is liable on conviction to a fine not exceeding one million shillings or a term of imprisonment not exceeding five years, or both.</p>	<p>the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word “Duplicate”, commits an offence and is liable on conviction to a fine not exceeding one million shillings or a term of imprisonment not exceeding five years, or both.</p>	<p>Unlawful issuing of duplicate receipts.</p>	<p>45. A warehouse operator who issues or facilitates the issuing of a duplicate 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 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.</p>	<p>41. A warehouse operator who issues or facilitates the issuing of a duplicate 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 the word “Rep”, 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.</p>
<p>General penalty</p> <p>42. A person convicted of an offence under this Act for which no other penalty is specified shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not</p>	<p>General penalty</p> <p>48. A person convicted of an offence under this Act for which no other penalty is specified shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.</p>	<p>CLAUSE 48</p> <p>THAT, Clause 48 the Bill be amended by deleting the word “one” and substituting with the word, “three”.</p>	<p>CLAUSE 42</p> <p>THAT, Clause 42 the Bill be amended by deleting the word “one” and substituting with the word, “three”.</p>	

Meeting six months, or to h.			
<p>Schedule...</p> <p>Quorum</p> <p>2. (1) Subject to subparagraph (2), the quorum of the meeting shall be two thirds of the members.</p> <p>(2) Where there is a vacancy in the Council, the quorum of the meeting shall not be less than three members.</p> <p>(3) A decision of the Council shall not be invalid by reason only of a vacancy among the members thereof.</p>	<p>SCHEDULE</p> <p>THAT, paragraph (2) of the Schedule be amended in subparagraph (2) by deleting the word "three" and substituting thereof with the word "seven".</p>	<p>SCHEDULE</p> <p>THAT, paragraph (2) of the schedule be amended in subparagraph (2) by deleting the word "three" and substituting thereof with the word "seven".</p>	

3.0 PUBLIC PARTICIPATION

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

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

4. Ministry of Industry, Trade and Cooperatives through the State Department for Trade on 5th March, 2018 submitted written memoranda through the Principal Secretary.

Further, The Senate had engaged State Department of Trade; The Council of Governors; Cereal Growers Association; Food Trade East and Southern Africa; and the State Department of Crop Development, in the consideration of the Warehouse Receipt System Bill, 2017 (Senate Bill No. 10 of 2017).

4.0 COMMITTEE OBSERVATIONS

Having considered the Warehouse Receipt System Bill, 2017 (Senate Bill No. 10 of 2017) as well as the comparative clause by clause analysis of the Warehouse Receipt System Bill, 2018 (National Assembly Bills No. 2 of 2018) Committee observed that:

1. The Committee observed that Agricultural Policy as per paragraph 29 of Part I of the Fourth Schedule to the Constitution is a National Government Function. In line with this, the Objective of the Bill is to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities. This function is primarily performed through the issuance of licences, registration, revocation and suspension of warehouse operators by the Council. This function cannot therefore be delegated to any County Executives.
2. The Council whose main function is licencing and regulation are National Government Functions and not within the control of county governments.
3. 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 favourable.
4. The Committee noted that the two Bills are similar in form and substance, save for the minor variations mention in paragraph 7 and 8 below. We further note that the two Bill concerns counties and are subject to consideration by both Houses.
5. 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.

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

5.0 COMMITTEE RECOMMENDATIONS

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

CLAUSE 2

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

“warehouse operator” means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;

CLAUSE 3

THAT, clause 3 of the Bill be amended—

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

(3) The Council shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (e) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
- (f) the Principal Secretary for the time being responsible for matters related to finance or a representative;
- (g) one person nominated by the Council of Governors;
- (h) the Director-General of Agriculture and Food Authority or a representative;
- (i) the chief executive officer of the Council who shall be an *ex-officio* member;
- (j) one person nominated by Financial Sectors Regulators Forum;
- (k) one person nominated by the Kenya Farmers Association;
- (l) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (m) one person nominated by Consumer Federation of Kenya
- (n) one person nominated by Kenya Bankers Association; and
- (o) one person nominated by the Kenya Warehouse Operators Association.”

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

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

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

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

(e) in subclause (9), by—

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

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

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

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

CLAUSE 4

THAT, clause 4 of the Bill be amended—

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

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

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

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

CLAUSE 5

THAT, clause 5 of the Bill be deleted.

CLAUSE 9

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

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

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

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

CLAUSE 24

THAT, the Bill be amended by deleting clause 24 and substituting thereof with the following new clause—

Grading and weighing of agricultural products.

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

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

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

CLAUSE 25

THAT, the Bill be amended by deleting clause 25 and substituting thereof with the following new clause—

Inspection of stored products.

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

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

CLAUSE 27

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

CLAUSE 30

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

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

CLAUSE 31

THAT, Clause 31 of the Bill be amended in—

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

CLAUSE 32

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

CLAUSE 39

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

CLAUSE 41

THAT, Clause 41 of the Bill be amended—

(c) by deleting the words, “ in a case where endorsement is essential for negotiation” appearing in subclause (1);

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

CLAUSE 43

THAT the Bill be amended by deleting Clause 43 and substituting thereof with the following new clause—

Issuing of fraudulent warehouse receipts. 43. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding ten million Kenya shillings, or to both.

CLAUSE 44

THAT the Bill be amended by deleting Clause 44 and substituting thereof with the following new clause—

Issuing of receipts with false information. 44. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who fraudulently issues or knowingly facilitates the fraudulent issuing of a receipt for goods based on a false statement or a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on conviction a fine not exceeding ten million Kenya shillings or to a term of imprisonment not exceeding ten years, or both.

CLAUSE 45

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

Unlawful issuing
of duplicate
receipts.

45. A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word "Replacement", commits an offence and is liable on conviction to a fine not exceeding ten million Kenya shillings or a term of imprisonment not exceeding ten years, or both.

CLAUSE 48

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

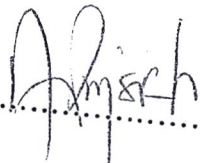
CLAUSE 50

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

SCHEDULE

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

SIGNED.....



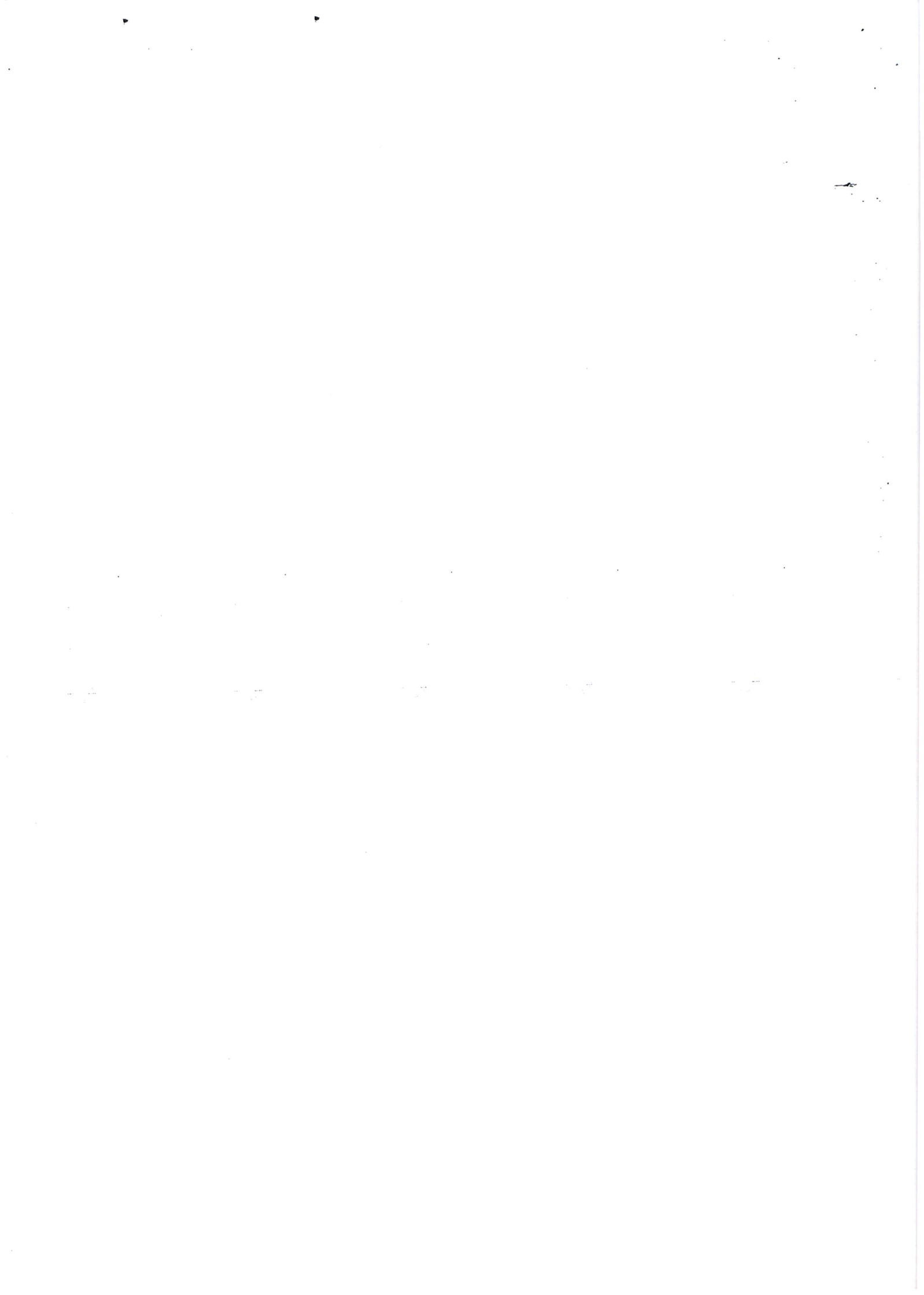
DATE.....

9th Oct. 2018

THE HON. ADAN HAJI ALI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK



Unlawful issuing
of duplicate
receipts.

45. A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word "Replacement", commits an offence and is liable on conviction to a fine not exceeding ten million Kenya shillings or a term of imprisonment not exceeding ten years, or both.

CLAUSE 48

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

CLAUSE 50

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

SCHEDULE

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

SIGNED..........DATE..........

THE HON. ADAN HAJI ALI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

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

PRESENT

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

APOLOGIES

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

IN- ATTENDANCE

COMMITTEE SECRETARIAT

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

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

PRELIMINARIES

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

MIN.NO. DC/ALF/140/2018: CONSIDERATION OF THE LEGAL BRIEF ON THE WAREHOUSE RECEIPT SYSTEM BILL, 2017 (SENATE BILL NO. 10 OF 2017)

The legal Counsel took the Committee through the Bill and proposed the following amendments:-

CLAUSE 2

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

“warehouse operator’ means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;

CLAUSE 3

THAT, clause 3 of the Bill be amended—

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

(3) The Council shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
- (c) the Principal Secretary for the time being responsible for matters related to finance or a representative;
- (d) one person nominated by the Council of Governors;
- (e) the Director-General of Agriculture and Food Authority or a representative;
- (f) the chief executive officer of the Council who shall be an *ex-officio* member;
- (g) one person nominated by Financial Sectors Regulators Forum;
- (h) one person nominated by the Kenya Farmers Association;
- (i) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (j) one person nominated by Consumer Federation of Kenya
- (k) one person nominated by Kenya Bankers Association; and
- (l) one person nominated by the Kenya Warehouse Operators Association.”

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

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

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

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

(c) in subclause (9), by—

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

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

CLAUSE 4

THAT, clause 4 of the Bill be amended—

- (a) in paragraph (a) by inserting the word “produced” immediately after the word “commodities”;
- (b) by inserting the following new paragraph immediately after paragraph (j)—

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

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

CLAUSE 5

THAT, clause 5 of the Bill be deleted.

CLAUSE 9

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

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

CLAUSE 16

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

CLAUSE 17

THAT, the Bill be amended by deleting clause 17 and substituting therefor the following new clause—

Licensing of
warehouse
operators.

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

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

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

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

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

CLAUSE 20

THAT, clause 20 of the Bill be deleted.

CLAUSE 21

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

Revocation of licence
and suspension of
licence or operations.

17. (1) The Council may suspend or revoke a licence—

- (a) if a warehouse operator transfers all or part of his or her control over the licence;
- (b) immediately a licensed warehouse commences the process of dissolution or is dissolved; or
- (c) if the warehouse operator violates or fails to comply with this Act.

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

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

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

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

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

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

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

CLAUSE 22

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

Fees.

22. The Council may charge fees for initial warehouse inspection and issue of warehouse operator's licence.

CLAUSE 23

THAT, clause 23 the Bill be amended in subclause (2) by—

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

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

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

CLAUSE 24

THAT, the Bill be amended by deleting clause 24 and substituting thereof with the following new clause—

Grading and weighing of agricultural products. 24. (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws related to weights and measures.

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

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

CLAUSE 25

THAT, the Bill be amended by deleting clause 25 and substituting thereof with the following new clause—

Inspection of stored products.

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

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

CLAUSE 27

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

CLAUSE 30

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

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

CLAUSE 31

THAT, Clause 31 of the Bill be amended in—

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

CLAUSE 32

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

CLAUSE 39

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

CLAUSE 41

THAT, Clause 41 of the Bill be amended—

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

CLAUSE 43

THAT the Bill be amended by deleting Clause 43 and substituting thereof with the following new clause—

Issuing of fraudulent warehouse receipts. 43. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding ten million Kenya shillings, or to both.

CLAUSE 44

THAT the Bill be amended by deleting Clause 44 and substituting thereof with the following new clause—

Issuing of receipts with false information. 44. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who fraudulently issues or knowingly facilitates the fraudulent issuing of a receipt for goods based on a false statement or a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an

offence and is liable on conviction a fine not exceeding ten million Kenya shillings or to a term of imprisonment not exceeding ten years, or both.

CLAUSE 45

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

Unlawful issuing
of duplicate
receipts.

45. A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word “Replacement”, commits an offence and is liable on conviction to a fine not exceeding ten million Kenya shillings or a term of imprisonment not exceeding ten years, or both.

CLAUSE 48

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

CLAUSE 50

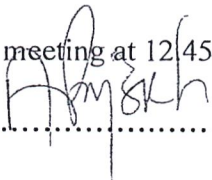
THAT, Clause 50 of the Bill be amended by deleting the word “shall” and substituting therefor the word “may”.

SCHEDULE

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

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

The Chairperson adjourned the meeting at 12:45pm

Signed.....


(Chairperson)

Date.....
9th Oct. 2018

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK
MEMBERS ATTENDANCE REGISTER

DATE	VENUE	AGENDA	NAME	TITLE	SIGNATURE
2/10/2018	MEDIA HOUSE	CONSIDERATION OF THE MATTERS BEING SYSTEM BUL, 2017 (SYSTEM BUL)			
			1 Hon. Adan Haji Ali, M.P.	Chairman	
			2 Hon. Emmanuel Wangwe, MP.		
			3 Hon. Simba Arati, MP.	member	
			4 Hon. Ferdinand Wanyonyi, MP		
			5 Hon. Maison Leshoorno, MP.	member	
			6 Hon. Florence Mutua, MP		
			7 Hon. Silas Kipkoech Tiren, M.P.		
			8 Hon. Gabriel Kago Mukuha, M.P.		
			9 Hon. John Paul Mwirigi, M.P.	Member	
			10 Hon. Adan Haji Yussuf, M.P.	Member	
			11 Hon. Janet Jepkemboi Sitenoi, M.P.		
			12 Hon. Francis Muryua Waititu, M.P.	Member	
			13 Hon. Dr. John Kanyuthia Mutunga, M.P.		
			14 Hon. Dr. Daniel Kamuren Tuitock, M.P.	Member	
			15 Hon. Fred Ouda, M.P.	Member	
			16 Hon. Joyce Kamene, MP.	Member	
			17 Hon. Justus Makokha Murunga, MP.		
			18 Hon. Yegon Brighton Leonard, MP	Member	