

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE WAREHOUSE RECEIPTS (AMENDMENT) ACT, 2015

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THE UNITED REPUBLIC OF TANZANIA



NO.3 OF 2015

I ASSENT,

JAKAYA MRISHO KIKWETE
President

25th April, 2015

An Act to amend the Warehouse Receipts Act, Cap. 339 with a view to making better provisions for the regulation of the warehouse receipts system.

[.....]

ENACTED by Parliament of United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title
Cap. 339

1. This Act may be cited as the Warehouse Receipts (Amendment) Act, 2015 and shall be read as one with the Warehouse Receipts Act, hereinafter referred to as the “principal Act”.

PART II
GENERAL AMENDMENTS

Amendment
of section 2

2. The principal Act is amended in section 2 by deleting the words “and to such other goods” appearing between the words “commodities” and “as the Minister”;

Amendment
of section 3

3. The principal Act is amended in section 3, by-

(a) deleting-

(i) the definition of the term “Board” and substituting for it the following-

“Board” means the Warehouse Receipts Regulatory Board established under section 4;

(ii) the word “agricultural” appearing in the definition of the term “Minister”;

(b) inserting-

(i) the words “in writing or electronic form” between the words “receipt” and “issued” appearing in the definition of the term “warehouse receipts”;

(ii) in their alphabetical order the following new definitions-

“collateral manager” means a person who issues warehouse receipt, verifies and gives advice on collateral transactions based on that issued warehouse receipt in order to minimize credit risk of the stored commodities;

“commodity” includes agricultural, non-agricultural commodities as may be declared by the Minister;

“key actors” includes depositors, warehouse operators, bank or financial institution and collateral managers or directly associated with warehouse receipt;

“lien” means a right to hold and retain goods in terms of section 54(1) and (2); and

“shrinkage” means a degree of drawback, contracts to a smaller volume, size or extent as a result of heat, moisture, aeration, drying or deterioration of quality; and

“secondary processing” means the process of changing product form which involve physical means;

“tertiary processing” means a process of adding value of a commodity that involves physical and chemical change of a commodity;

Amendment
of section 4

4. The principal Act is amended in section 4, by-

(a) deleting subsection (1) and substituting for it the following-

“(1) There is established a Board to be known as the Warehouse Receipts Regulatory Board.”

- (b) adding immediately after subsection (3) the following new subsections:
- “(4) Notwithstanding the provisions of this section, the Attorney-General shall have the right to intervene in any suit or matter instituted by, or against the Board.
- (5) Where the Attorney-General intervenes in any matter in pursuance of subsection (2), the provisions of the Government Proceedings Act shall apply in relation to the proceedings of that suit or matter as if it had been instituted by, or against the Government.
- (6) For the purposes of subsections (2) and (3), the Board shall have a duty to notify the Attorney-General of any impending suit or intention to institute a suit or matter by, or against the Board.”; and

Amendment
of section 5

5. The principal Act is amended in section 5, by-
- (a) deleting the word “warehouses” appearing in paragraph (a) and substituting for it the words “warehouse operations”;
- (b) deleting paragraph (b) and substituting for it the following paragraphs:
- “(b) lincensing of collateral managers;
- (c) print and approve warehouse receipt books or receipts in any other forms;

- (d) enroll and keep a register of key actors;
- (e) collaborate with other national and international bodies with similar functions and objectives to those of the Board;
- (f) represent the Government in national and international *fora*; and
- (c) renaming paragraphs “(c)”, “(d)”, “(e)” and “(f)” as paragraphs “(g)”, “(h)”, “(i)” and “(j)” respectively.

Amendment
of section 6

6. The principal Act is amended in section 6, by-

- (a) deleting paragraph (n) appearing in subsection (1) and substituting for it the following:
“(n) charge, assess and collect fees from key actors;”
- (b) inserting immediately at the beginning of paragraph (q) the words “with approval of the Minister for Finance;”
- (c) by adding new subsection (3)(a) and (b) as follows:
 - (a) for purpose of implementation of the provisions of this Act, the Board shall require region and district authorities to form supervision committees to supervise Warehouse Receipt Systems.”
 - (b) meeting of the regional and district supervision committees shall be chaired by Regional Administrative Secretary or District Executive Director”;

(c) in consultation with the Minister responsible for local government authorities, the Minister may make Regulations prescribing composition of the supervision committees and other matters that relates to the Supervisory Committee.”

Addition of section 8A

7. The principal Act is amended by adding immediately after section 8 the following provision:

“Indemnity

8A. Anything done by a member of the Board or any staff of the Board shall, if done in good faith, in the execution of the functions conferred upon the member or staff of the Board by this Act, not render the member or staff personally liable for any matter.”.

Amendment of section 9

8. The principal Act is amended in section 9, by-

- (a) deleting in paragraph (b), the phrase “inspecting and supervising warehouses” and substituting, for it the words “key actors”;
- (b) deleting paragraph (d); and (c);
- (c) renaming paragraph (e) as paragraph (d).

Amendment of section 18

9. The principal Act is amended in section 18 by adding immediately after subsection (2) the following provisions:

“(3) A person to whom a licence has been granted by the Board shall not without approval of the Board assign it to any other person.

(4) A person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a fine of not less than twenty million shillings or to imprisonment for a term of not less than twelve months and not exceeding five years or both.”.

Amendment
of section
19

10. The principal Act is amended in section 19, by deleting the phrase “Each warehouse operator” appearing at the beginning of subsection (1) and substituting for it the phrase “Warehouse operator”.

Amendment
of section
32

11. The principal Act is amended in section 32 by-

- (a) inserting the words “Warehouse Receipts as mortgage or” immediately before the word “in” appearing at the beginning of paragraph (a) of subsection (2); and
- (b) deleting the word “or” appearing at the end of paragraph (c) of subsection (2); and
- (c) adding immediately after paragraph (d) the following-
 - (e) as a proof of title of ownership;
 - (f) as a mortgage instrument”.
- (d) adding subsection (3) as follows:-
 - (3) A warehouse operator shall insure a warehouse with a comprehensive insurance cover.

Amendment
of section
33

- 12.** The principal Act is amended in section 33(1), by inserting after paragraph (h) the following new paragraphs:
after paragraph (h) the following new paragraphs:
“(i) a statement on the treatment of warehouse receipts of the commodity which undergoes secondary or tertiary processing; and
(j) signatures of both authorized signatory.”

Amendment
of section
36

13. The principal Act is amended in section 36, by-

- (a) designating its contents as subsection (1); and
- (b) adding immediately after the designated subsection (1) the following new provisions:
 - “(2) Notwithstanding subsection (1), a warehouse receipt shall be null and void if-
 - (a) the warehouse receipt is not consistent with the requirements stipulated under section 33;
 - (b) the contents of the warehouse receipt are not duly filled in;
 - (c) it is not signed by authorised parties;
 - (d) there is a duplication of serial numbers;
 - (e) there is mismatch of records between the warehouse receipt and inner documents; or
 - (f) there is a misrepresentation of required information.”

Amendment
of section
38

14. The principal Act is amended in section 38-

- (a) in subsection (1), by deleting subsection (1) and substituting for it the following-
 - “(1) The holder shall, in the case of loss, theft or destruction of a warehouse receipt, immediately report to warehouse operator..
 - (2) Subject subsection (1), the warehouse operator, shall, upon receipt of the information of loss, theft or destruction of a warehouse receipt, immediately report to the Board.”
- (b) by renumbering subsection (2) as subsection (3);
- (c) in subsection (3) as renumbered by-
 - (i) deleting the phrase “the request of the holder is accompanied by” appearing in the open words to subsection (3);
 - (ii) adding immediately before paragraph (a) the following paragraphs:
 - “(a) the holder pays a prescribed fee; and
 - (b) the request of the holder is accompanied by-”
 - (iii) designating the contents of paragraphs (a), (b), (c) and (d) as subparagraphs (i), (ii), (iii) and (iv) respectively;
 - (iv) by adding immediately after paragraph (ii) as renamed the following new paragraph:

- “(iii) download from the website of the Board or an approval letter from the Board”;
- (v) deleting subparagraphs (ii) and (iii) as designated; and
- (vi) renaming subparagraph (iv) as (ii).

Amendment
of section.
39

15. The principal Act is amended by adding immediately after section 39, the following new section:

Collateral
Manager

39A.(1) A person who wishes to perform functions of a collateral manager shall apply for a licence to the Board.

(2) The Minister may make regulations prescribing among other things

- (a) functions, rights and obligations of a collateral manager; and
- (b) conditions to be fulfilled by a collateral manager before applying for a licence under this section.”

Amendment
of section
53

16. The principal Act is amended in section 53 by deleting the words “holder of warehouse receipt or the depositor” appearing in subsection (1) and substituting for them the word “Board”.

Amendment
of section
60

17. The principal Act is amended in section 60 by adding immediately after subsection (1) the following new subsections:

“(2) Where a warehouse operator refuses to deliver goods for the purpose of satisfying a lien, the Board shall assess and approve the value and amount of the commodity to be sold to satisfy the lien”;

Addition of section 70A

18. The principal Act is amended by adding immediately after section 70 the following section:

“Trade platforms

Cap. 79

70A.-(1) Notwithstanding any other written law, the transfer of a warehouse receipt by a warehouse operator or collateral manager under the warehouse receipt system, shall be effected through a trading platform which is licensed or approved in accordance with the Capital Markets and Securities Act.

Cap. 79

(2) A person who operates a trading platform in accordance with any other written law shall, within three months of the coming into operation of this act, apply for a license or approval in accordance with the Capital Markets and Securities Act.

Amendment of section 71

19. The principal Act is amended in section 71, by deleting the phrase “for imprisonment for a term not exceeding five years or to a fine not exceeding five million shillings or both” and substituting for it the phrase “to a fine of not less than fifty percent of the value of such goods or to imprisonment for a term of not less than twelve months and not exceeding five years, or both.”.

Amendment of section 72

20. The principal Act is amended in section 72, by deleting the phrase “to imprisonment for a term not

exceeding one year or to a fine not exceeding one million shillings or to both” and substituting for it the phrase “to a fine of not less than fifty percent of the value of such goods or to imprisonment for a term of not less than twelve months and not exceeding five years or both.”

Amendment
of section
73

21. The principal Act is amended in section 73, by deleting the phrase “to imprisonment for a term not exceeding five years or to a fine not exceeding five million shillings” and substituting for it the phrase “to a fine of not less than fifty percent of the value of such goods or to imprisonment for a term of not less than twelve months and not exceeding five years, or both.”

Amendment
of section 75

22. Principal Act is amended in section 75, by-

- (a) designating its contents as subsection (1); and
- (b) adding immediately after subsection (1) as designated the following provision-

“(2) Where a holder of a warehouse receipt or depositor proves that the goods for which a receipt was obtained was not delivered to him, court may, in addition to any penalty imposed under subsection (1), order the warehouse operator, officer, agent or servant of the warehouse as the case may be, to compensate the owner or holder an amount of money equal to the value of the undelivered goods.”

Amendment
of section 78

23. The principal Act is amended in section 78, by deleting the phrase “not exceeding three months or to a fine

not less than five million shilling and not exceeding five hundred thousand shillings” and substituting for it the phrase “not exceeding ten million shillings or imprisonment for a term of not less than twelve months and not exceeding five years or both”:

Addition of
section 78A

24. The principal Act is amended by adding immediately after section 78 the following new section:

“Compounding
offences

78A.-(1) Where a person admits commission of an offence under this Act, the Board may compound the offence by accepting from such person a sum of twenty percent of the value of the goods.

(2) Subject to subsection (4), where proceedings are brought against a person for an offence under this Act, it shall be a defence if that person proves that the offence against which he is charged was compounded.

(3) Any sum of money received under this section shall be treated as a fine imposed by a court for the offence.

(4) Where an offence is compounded under this section, the court may make an order as if the person concerned had been convicted by the court for that offence.

(5) The order under subsection (4) shall not be made unless the person concerned is given an opportunity to show cause why the order should not be made.”

Amendment
of section 79

- 25.** The principal Act is amended section 79(1), by-
- (a) deleting the words “and licensing” appearing in paragraph (m) and substituting for it the words “licensing, supervision of warehousing, and issuance of duplicate warehouse receipts”
 - (b) adding immediately after paragraph (m) as amended the following paragraphs:
 - “(n) prescribing forms as may be prescribed under this Act;
 - (o) prescribing obligations and rights of key actors;
 - (p) prescribing a form of licence issued under this Act; and”
 - (c) renaming paragraph (n) as paragraph (q).

Addition of
sections 80,
81, 82 and
83

26. The principal Act is amended by adding immediately after section 79 the following new sections:

“Standard grade
and quality

80. Subject to the provisions of this Act, every warehouse operator shall abide by standards, grades and quality parameters set out by a competent authority.

Weights and
measures

81. Subject to the provisions of this Act, every warehouse operator shall abide by weight and measurement parameters set out by a competent authority.

Recognition of
electronic licence
and warehouse
receipt

82. Where this Act provides information or any other matter in respect of a licence or a warehouse receipt, such information or matter shall be in writing, typewritten or printed form, and shall be

typewritten or printed form, and shall be deemed to be valid if such licence or warehouse receipt-

- (a) is rendered or made available in an electronic form; and
- (b) is accessible for subsequent reference.”

Deposit of
commodities in
warehouse

83. Notwithstanding any provision of this Act, a farmer shall not be compelled to deposit commodities in the warehouse.

Passed in the National Assembly on the 21st March, 2015.

THOMAS D. KASHILILLA
Clerk of the National Assembly