

# **NIGERIAN INDEPENDENT WAREHOUSE REGULATORY AGENCY AND OTHER RELATED MATTERS, 2022 (SB. 851).**

## **ARRANGEMENT OF SECTIONS**

### **PART I - ESTABLISHMENT OF THE NIGERIAN INDEPENDENT WAREHOUSE REGULATORY AGENCY AND ITS GOVERNING BOARD**

1. Establishment of the Nigerian Independent Warehouse Regulatory Agency
2. Establishment of a governing board for the Agency
3. Tenure of Office
4. Cessation of membership
5. Emolument of members

### **PART II - POWERS AND FUNCTIONS OF THE BOARD OF THE AGENCY**

6. Powers of the Board
7. Functions of the Agency

### **PART III - STAFF OF THE AGENCY**

8. Appointment and responsibilities of the Director-General
9. Appointment and responsibilities of the Secretary
10. Other staff
11. Pension
12. Experts and consultants

### **PART IV - LICENSING PROCEDURE**

13. Issuance of licences
14. Transitional provisions applicable to existing Warehouse Operators
15. Licensing procedure
16. Validity of license
17. Conditions for the issuance of a license
18. Furnishing of a bond by applicant
19. Right of action on a bond
20. Designation as a licensed and bonded Warehouse
21. Casualty insurance and recovery of loss
22. Schedule of charges
23. Revocation, suspension or refusal to grant a license
24. Power to appoint Inspectors
25. Publication of particulars of Warehouse Owners and Operators

### **PART V - WAREHOUSE RECEIPTS**

26. Issuance of a Warehouse Receipt
27. Warehouse Receipt as evidence of proprietary rights
28. Form of Warehouse Receipt
29. Contents of a Warehouse Receipt
30. Negotiable Warehouse Receipts
31. Non-Negotiable Warehouse Receipts
32. Altered Warehouse Receipts

33. Rights of purchasers of altered receipts against Warehouse Operator
34. Lost or missing Warehouse Receipts
35. Duplicate Warehouse Receipts
36. Trading in Warehouse Receipts on commodity exchanges

#### PART VI - RIGHTS AND OBLIGATIONS OF A WAREHOUSE OPERATOR

37. Application of provisions on Pioneer Status
38. Obligation of a Warehouse Operator to deliver
39. Obligation to deliver in accordance to the demand of the holder
40. Justification for delivery of goods
41. Liability for wrongful delivery of goods
42. Exception to obligation to deliver
43. Liability for failure to cancel Warehouse Receipt after the delivery of goods
44. Liability for failure to cancel or mark Warehouse Receipt after Delivery in parts of goods.
45. Liability for loss or theft of a Warehouse Receipt
46. Delivery of goods to persons with valid titles or right
47. Liability for wrongful description of goods
48. Registration of Warehouse Receipts
49. Liability for loss or injury to goods
50. Separation or mixing of fungible goods
51. Warehouse Operator's right to lien
52. Enforcement of lien
53. Loss of right of lien
54. Statement of charges under lien
55. Failure to satisfy lien
56. Other remedies.
57. Methods of enforcement of lien
58. Perishable and hazardous goods

#### PART VII - NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

59. Requirements of negotiation of a Warehouse Receipt
60. Rights derived from negotiation
61. Loss of rights to goods
62. Rights acquired without due negotiation
63. Rights of a transferee of a Warehouse Receipt
64. Rights and obligations of a transferor and a transferee of a negotiable Warehouse Receipt
65. Warranties on negotiation of the Warehouse Receipt

#### PART VIII - ESTABLISHMENT OF THE CENTRAL REGISTRY

66. Establishment of the Central Registry for Warehouse Receipt
67. The Registrar, staff and other officers of the Registry
68. Registration of Warehouse Receipts
69. Registration and certification of Warehouse Receipts
70. Maintenance of a register and on-line operations
71. Power to make Regulations for the Central Registry

## PART IX - RESOLUTION OF DISPUTES

72. Referral of disputes
73. Arbitral Panel
74. Interpleader Action

## PART X - OFFENCES AND PENALTIES

75. Operating a Warehouse without a license
76. Issuance of false receipts where goods have not been received
77. False statement contained in a Warehouse Receipt
78. Issuance of unmarked duplicate receipts
79. Consequences for non-declaration by Warehouse Operator of interest in goods
80. Delivery of goods without obtaining negotiable receipt
81. Negotiation of receipt for mortgaged goods
82. Obstructing a Warehouse Inspector
83. Alteration of document
84. Aiding and abetting
85. General penalty

## PART XI - FINANCIAL PROVISIONS

86. Funds of the Agency
87. Sound financial principles
88. Bank accounts
89. Borrowing powers
90. Annual financial estimates
91. Accounts
92. Audit
93. Financial year
94. Publication of performance reports
95. Annual report
96. Power of Minister to issue directives

## PART XII - MISCELLANEOUS PROVISIONS

97. Effect of revocation or termination of license
98. Insurance of goods
99. Inspection of Warehouses by the Agency
100. Classification of Warehouses
101. Fees
102. Protection of the members of the Board and staff of the Agency
103. Regulations
104. Interpretation
105. Short title

## SCHEDULE

### Meetings of the Board

1. Convening Meetings
2. Quorum
3. Decision Making
4. Disclosure of Interest
5. Co-option of persons to meetings of the Board
6. Minutes of Meetings
7. Board to regulate its own procedure

**A BILL  
FOR  
AN ACT TO ESTABLISH THE NIGERIAN INDEPENDENT WAREHOUSE REGULATORY AGENCY AND OTHER  
RELATED MATTERS, 2022 (SB. 851).**

**Sponsor: Sen. Umar, Sadiq Suleiman (*Kwara North*)**

[                    ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

**PART I - ESTABLISHMENT OF THE NIGERIAN INDEPENDENT WAREHOUSE REGULATORY AGENCY AND  
ITS GOVERNING BOARD**

1. -(1) There is established a body to be known as the Nigerian Independent Warehouse Regulatory Agency (in this Act referred to as “the Agency”).

(2) The Agency:

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) may sue or be sued in its corporate name.

2. -(1) There is established for the Agency, a governing board (in this Act referred to as 'the Board') with overall responsibility for the control of the management of the affairs of the Agency.

(2) The Board shall consist of:

- (a) a Chairman;
- (b) the Director-General of the Agency;
- (c) a representative of each of the following, not below the rank of a director:
  - (i) the Federal Ministry of Trade and Investment;
  - (ii) the Federal Ministry of Agriculture and Rural Development;
  - (iii) the Federal Ministry of Finance;
  - (iv) the Federal Ministry of Justice;
  - (v) the Central Bank of Nigeria;
  - (vi) the Securities and Exchange Commission;
- (d) a representative from the Nigeria Association of Small and Medium Enterprises;
- (e) a representative of the Chartered Institute of Bankers;
- (f) two representatives of association of farmers in Nigeria; and
- (g) a representative of the Association of Nigerian Enterprises.

(3) The members of the Board referred to in subsection (2), paragraphs (a) and (b) of this section shall be appointed by the President on the recommendation of the Minister and shall be persons of proven integrity with cognate experience and qualifications of not less than ten years in the relevant fields.

3. The Chairman and other members of the Board, not being an ex-officio member, shall hold Office for a term of four years and may be re-appointed for another term of four years and no more.

4. -(1) The provision of section 3 of this Act notwithstanding, a member of the Board shall cease to hold office as a member if:

- (a) he resigns his appointment as a member of the Board by notice under his hand addressed to the President through the Minister;
- (b) he becomes of unsound mind;
- (c) he becomes bankrupt or makes a compromise with his creditors;
- (d) he is convicted of a felony or of an offence involving dishonesty or corruption;
- (e) he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body;
- (f) he has been found guilty of contravening the Code of Conduct for public officers or of gross misconduct in relation to his duties;
- (g) in the case of a person possessing a professional qualification, is disqualified by a competent authority;
- (h) in the case of a person who becomes a member by a virtue of the office he occupies, he ceases to hold such office; and
- (i) the President is satisfied that it is not in the interest of the Agency or the public for the person to continue in office.

(2) Where a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so as to represent the same interest as his predecessor.

5. -Members of the Board shall be paid such remuneration and allowances as the Federal Government may from time to time approve.

## **PART II - POWERS AND FUNCTIONS OF THE BOARD OF THE AGENCY**

6. -(1) The Board has powers to:

- (a) formulate the general policy guidelines for the Agency;
- (b) supervise the management of the property, funds and income of the Agency and other concerns and affairs of the Agency;
- (c) issue operational guidelines for the administrative structure of the Agency;
- (d) ensure the implementation of the Performance Management System in the Agency;
- (e) employ and determine the terms and conditions of the employees of the Agency; and
- (f) do such other things as are necessary in the carrying out of its responsibilities under this Act

7. -(1) The functions of the Agency are to:

- (a) license Warehouses in accordance with the provision of this Act;
- (b) regulate the operations of a licensed Warehouse Keepers under this Act;
- (c) classify licensed Warehouses into categories;
- (d) certify in licensed Warehouses operators including Warehouse Inspectors, Samplers, Graders and Weightiers;
- (e) provide requisite training for licensed certified Warehouse Operators and persons employed in licensed Warehouses;
- (f) promote awareness and use of Warehouse Receipts;
- (g) hold regular consultations with Warehouse Operators in the development of appropriate policy on Warehouse operations under this Act and build consensus on policy issues and measures;
- (h) promote and co-ordinate inflow of credit and grants to the sector and establish linkages that will attract investment from other countries;

- (i) publish periodically the names and addresses of licensed and bonded Warehouses and provide classification of their licenses;
- (j) publish the results of investigations made on any matter pertaining to Warehouse operations;
- (k) ensure that licensed Warehouses maintain internationally acceptable minimum standards of storage and operations;
- (l) promote the trade ability of Warehouse Receipts;
- (m) create electronic linkages between the Warehouse Receipts Registry and existing commodity exchanges;
- (n) provide advice and support on regulation of weights and under the Weights and Measures Act in collaboration responsible Ministry;
- (o) establish quality standards to enable appropriate value to be placed on each agricultural product or by-product for storage at a licensed Warehouse;
- (p) regularly advise Federal and State Governments on policies and programs to promote the effective use of Warehouse Receipts framework, including mechanisms to support establishment of agro product processing centres in proximity to licensed Warehouses;
- (q) in consultation with the Minister, develop and implement a program to support the setting up of processing centres and increased capacity for processing of stored agricultural products by licensed Warehouse Operators; and
- (r) carry out such other activities as are necessary for the effective discharge of all or any of the functions of the Agency under this Act.

(2) For the purpose of carrying out the functions listed in subsection (1) of this section, the Agency has powers to:

- (a) enter into and investigate activities and operations in licensed Warehouses;
- (b) examine directly or through licensed Agents the operations, books, and accounts of licensed Warehouses to ensure that their operations are in conformity with prescribed minimum standard, with respect to weighing and codification of commodities;
- (c) suspend, revoke or terminate (as the case may be) the operations of the licensed Warehouse following an investigation into the operations of a Warehouse keeper after affording the licensed holder the opportunity of being heard; and
- (d) take steps to ensure the attendance of witnesses and production of records and information in carrying out any investigation into a Warehouse operations.

### **PART III - STAFF OF THE AGENCY**

8. -(1) The Director-General of the Agency shall be appointed by the President on the recommendation of the Minister.

(2) The Director-General is the Chief Executive Officer of the Agency.

(3) The Director-General is responsible for the management of the funds, property and business of the Agency and for the day to day administration, organization and control of the staff of the Agency.

(4) The Director-General, at such intervals as the Board may determine, is responsible for keeping the Board informed of the business of the Agency.

9. -(1) The Secretary of the Agency shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Secretary is responsible for:

- (a) issuing notices of meetings of the Board;

- (b) keeping records of proceedings of the Board;
- (c) keeping records of all the activities of the Agency; and
- (d) superintending over the management of the affairs of the Central Registry.

10. -(1) The Board shall appoint from time to time such other staff as may be required for the purpose of the efficient performance of the functions of the Agency.

(2) The conditions of service of the staff of the Agency with respect to remuneration, pension, or other benefits on retirement or termination of the officers shall be as provided for in the Public Service of the Federation.

(3) The Board may, on inception, take staff on secondment from other departments of government that possess related skills and experience needed to achieve the objectives of the Agency.

(4) The Board may delegate any of its powers of appointment under this section to the Director-General, subject to such terms and conditions as the Board may determine.

11. -(1) Service in the Agency shall be pensionable and subject to the Pension Reform Act.

(2) Nothing in this section shall preclude the appointment of a person to any office on terms which preclude the grant of pension in respect of that office.

12. -(1) The Agency may engage the services of experts and consultants for purpose of carrying out any its function where special competence expertises are required.

(2) Experts or consultants engaged by virtue of the provision of this section may be paid such fees and allowances and afforded such facilities as the Agency, with the approval of the Board, may determine.

#### **PART IV - LICENSING PROCEDURE**

13. -(1) A person shall not operate a commercial Warehouse without a valid license issued by the Agency.

(2) The Agency may, upon application in the prescribed form, issue to a Warehouse keeper a license for the operation of a commercial Warehouse in accordance with the provisions this Act.

(3) In issuing a license under subsection (2) of this section, the Agency shall satisfy itself that:

(a) the Warehouse is suitable for the proper storage of the particular goods for which a license is required;

(b) the Warehouse keeper meets the conditions for eligibility to operate a licensed Warehouse of the kind applied for as may be prescribed in regulations issued pursuant to this Act; and

(c) the Warehouse keeper agrees, as a condition to the granting of the license, to comply with and abide by the provisions of regulations made pursuant to this Act.

14. -(1) The Agency may by regulations provide for a transitional period, not exceeding two years for all existing commercial Warehouse Operators to fully comply with and bring their operations in line with the provisions of this Act.

(2) Where an existing Warehouse Operators referred to in subsection (1) of this section continues to receive and warehouse commodities or designated good, without a license after a period of six months from the date specified in regulations made by the Agency such commercial Warehouse Operator must conspicuously display a notice, in the form and manner prescribed in regulations that it is neither bonded nor licensed.

15. -(1) A person requiring a licence under this Act may apply to the Agency in the manner prescribed in regulations made pursuant to this Act.

(2) The Agency shall, before granting a license:

(a) inspect or authorize the inspection of the Warehouse in respect of which a license is applied for, to determine the suitability of the Warehouse for the storage of the particular goods for which the license is required; and

(b) publish the application in two national newspapers requesting for objections in accordance with rules prescribed in regulations made pursuant to this Act.

(3) The Agency shall, upon being satisfied that a Warehouse is suitable for the storage of the goods in the license classification and fulfilment of all other conditions grant a Warehouse license to the applicant in the classification applied for upon payment of the prescribed fees.

(4) The applicant shall thereafter annually pay the prescribed fee to the Agency on or before each anniversary of the granting of the license.

(5) Every Warehouse Operator shall display the license issued by the Agency in a conspicuous place at the entrance of the Warehouse or at any other place on the premises during working hours as regulations may prescribe.

16. The validity of a license shall be twelve months or such other periods, not exceeding three years, as the Agency may from time to time determine and renewable on terms and conditions as may be specified in regulations.

17. -(1) A license shall not be issued by the Agency unless the applicant has satisfied all of the conditions prescribed in this Act and regulations made pursuant to this Act in respect of the type and category of license applied for.

(2) Prior to issuing a license under this Part, the Agency shall ensure that:

(a) the applicant is in possession of a Warehouse, whether as a lessee or owner;

(b) in the case of a lease, regulations shall prescribe the minimum lease period;

(c) upon inspection, the Warehouse is suitable for warehousing of the category of goods or products with all required appurtenances;

(d) the devices for safe storage of the goods or products in respect of the particular class of license applied for are available;

(e) the applicant's director or manager or its principal officers have requisite experience and track record for Warehouse operations and has not been convicted by a court of competent jurisdiction or indicted in any disciplinary proceedings on allegations of criminal action involving dishonesty or financial impropriety and professional misconduct in the last preceding seven years;

(f) the Warehouse and the goods or products to be kept therein are fully insured in respect of fire, theft and burglary or any other damage;

(g) the applicant is financially capable of conducting the business of warehousing; and

(h) the applicant or Warehouse Operator gives the requisite undertaking to abide by all conditions for grant of the license and to comply fully with regulations issued under this Act.

18. -(1) A Warehouse Operator applying for a license to operate a Warehouse shall, as a condition for the granting of the license, execute and submit to the Agency, for filing, a bond in the form and substance acceptable to the Agency to secure the faithful performance of the applicant's obligations as a Warehouse Operator.

(2) Where the Agency determines that a previously approved bond is, or for any cause is or has become insufficient, it may require an additional bond or bonds to be given by the Warehouse Operator concerned, conforming with the requirements of this section, and, unless the additional bond is given

within the time fixed by a written demand for it by the Agency, the license of the Warehouse Operator may be suspended or revoked by the Agency.

19. A person injured by the breach of any obligation in respect of which a bond is given, under section 18 of this Act, is entitled to sue in person on the bond in court, to recover the damages sustained by the breach.

20. -(1) Upon the filing and approval by the Agency of a bond in compliance with the requirements of this Act, for the operation of a licensed Warehouse, the Warehouse may be designated as licensed and bonded Warehouse and the Warehouse Operator shall display in a conspicuous place, the Agency's emblem.

(2) Save as provided under this Act, a Warehouse shall not be designated as licensed or bonded and a name or description conveying the impression that it is so licensed or bonded shall not be used until a license has been issued and a bond, as provided for in section 18 of this Act, has been filed with approval of the Agency.

(3) A person who contravenes the provision of subsection (2) of this section commits an offence and liable on conviction to a term of imprisonment of three years or a fine of three million Naira or to both fine and imprisonment.

21. -(1) A Commercial Warehouse Operator shall be obliged to ensure its warehouse structure and facilities for its own benefit.

(2) A depositor of commodities or goods in a commercial warehouse above a value stipulated by the Agency in the rules shall at the point of deposit in a licensed warehouse, do one of the following:

(a) provide evidence of at least an all risk insurance coverage for the commodity or goods deposited;

(b) request the Warehouse Operator to insure the commodities or goods deposited on its behalf and at its cost; or

(c) give written undertaking to secure insurance of the goods deposited in its name and in its favour.

(3) The requirement for depositor insurance shall not in any way reduce the warehouse operators duty of care over commodities or goods deposited in the warehouse.

22. -(1) An applicant for a license to operate a Warehouse under this Act, shall as a condition for the grant, file or cause to be filed with the Agency the name or list of commodities of goods proposed to be warehoused and a copy of the proposed schedule of charges as a Warehouse Operator.

(2) A licensed Warehouse Operator shall not make a change in the charges unless a notice of the change and its reasons have been filed and approved by the Agency.

(3) Where the Agency receives a proposal for change of charges, it shall afford the Warehouse Operator an opportunity to give reasons for the requested changes within one month of the receipt of the request and grant or refuse approval not later than two months from the date of the request.

(4) A refusal for the request for fee variation by the Agency shall be in writing addressed to the applicant containing all reasons for the refusal.

(5) A person aggrieved by the decision of the Agency on any matter relating to change of charges under this section may appeal to the Board.

23. -(1) The Agency may revoke, suspend, or refuse to grant a license as considered appropriate after granting to the Warehouse Operator the opportunity of being heard on the matter for any violation of the provisions of this Act.

- (2) A person aggrieved with the decision or action taken by the Agency in subsection (1) of this section may appeal to the Board.
- (3) Where a license is revoked, suspended or has expired, the Warehouse Operator shall terminate, in the manner prescribed by the Agency, all arrangements covering the receiving, storing, shipping, conditioning, or handling of commodities in the Warehouse covered by the license.
- (4) Without prejudice to the provision of subsection (3) of this section, the Warehouse Operator shall be permitted, under the direction or supervision of the Agency to deliver commodities previously received either to the holders of Warehouse Receipts or to other bonded Warehouses.
- (5) During the period of suspension of a license, the Warehouse Operator may, under the direction or supervision of the Agency, operate the Warehouse and may only receive commodities for storage, conditioning, shipping, or handling during the term of such suspension as may be prescribed in regulations made by the Agency.
- (6) The Agency shall by regulations prescribe procedures for the renewal of licences prior to their expiration.

24. -(1) The Agency may appoint or otherwise authorize persons or groups of persons as inspectors ("Warehouse Inspectors").

(2) The Agency shall prescribe in the regulations qualifications of persons to be appointed as a Warehouse Inspectors.

(3) A Warehouse Inspector appointed pursuant to the provisions of this Act has powers to inspect premises and goods kept in a Warehouse to ensure that a Warehouse Operator observes the provisions of this Act and its regulations and the terms and conditions contained in a license issued by the Agency under this Act.

(4) A Warehouse Inspector or any other person with written authorization may at any reasonable time during the day, enters into a Warehouse premises for the purpose of ensuring that the provisions of this Act and its regulations are adhered.

25. The Agency shall ensure that:

- (a) reliable data containing the identity of Warehouse owners, Warehouse Operators, licensed inspectors, reports of inspection of Warehouses as and a list of all revoked licences are made available, on request, by any person or furnished periodically to the public;
- (b) its audited accounts and annual performance reports are made public;
- (c) in carrying out its operations under this Act, it is guided by the principles of accountability and transparency; and
- (d) it holds regular stakeholder consultations on its operations, policy and application of its rules and regulations.

## **PART V - WAREHOUSE RECEIPTS**

26. A Warehouse Receipt shall only be issued by a Warehouse Operator duly authorized and licensed to do so under this Act.

27. -(1) A Warehouse Receipt drawn and issued by a Warehouse Operator shall be prima facie proof of the holder having proprietary rights in the goods.

(2) A person acquires proprietary rights in the goods, in relation to a Warehouse Receipt, if that person is entitled to the ownership of the goods:

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

28. -(1) A Warehouse Receipt shall only be printed by the Agency or at its order and shall be in the form prescribed by the Agency in regulations made pursuant to this Act.

(2) A Warehouse Receipt shall be supplied exclusively to licensed Warehouse Operators by the Agency.

(3) A Warehouse Receipt shall bear such security features as may be prescribed in regulations made by the Agency.

29. -(1) The Warehouse Receipt shall contain:

- (a) the name of the Warehouse Operator;
- (b) the location of the Warehouse where the goods are stored;
- (c) the date of issue of the receipt;
- (d) the consecutive number of the receipt;
- (e) a statement as to whether the goods received shall be delivered to the bearer or another person named or order;
- (f) the rate of storage charges;
- (g) a description of goods and packages containing the goods, showing the quantity, numbers or weights of the goods inside their packages or any other fuller description as the Agency may, from time to time, prescribe in regulations;
- (h) the grade or class of commodity received and the standard description according to the official classification of the commodity made pursuant to any subsisting law and rules in force, except where the receipt conspicuously embodies a bold imprint that it is not negotiable;
- (i) statement of amount of advances made or liabilities incurred for which the Warehouse Operator claims a lien or any arising contingent liabilities, and if the precise amount of those advances made or for those liabilities incurred is, at the time of the issue of the receipt, unknown to the Warehouse Operator or to the agent of the Warehouse Operator, a statement of the fact that advances have been made or liabilities are incurred and disclosing the purpose or nature of such liabilities;
- (j) if the goods are to be packed, processed, substituted or otherwise transformed whilst in the Warehouse, a statement to that effect and a description of the nature, size and quantity of what shall be the product of the packing, processing or transformation;
- (k) the expiry date of the goods, if any or any other information of the nature of the goods which does not impair the Warehouse Operator's obligation to deliver on the duty of care of the Warehouse Operator;
- (l) provision for endorsement of transfer by negotiation or charges on value of goods;
- (m) signature of the Warehouse Operator; and
- (n) any other information as the Agency may from time to time prescribe in regulations.

(2) A Warehouse Operator shall be liable to the person injured by information contained in a Warehouse Receipt, for damages caused by the omission of any term required to be included in the Warehouse Receipt under this Act.

(3) A Warehouse Operator may insert in receipts any other terms and conditions which are not contrary to the provisions of this Act or its regulations or which are not ordinarily void.

30. -(1) A Warehouse Receipt marked on its face as negotiable and issued to the bearer or to the order of a named person shall be known as a "Negotiable Warehouse Receipt" and be transferable by endorsement and delivery.

(2) Words shall not be inserted into a Negotiable Warehouse Receipt capable of rendering such receipt non-negotiable.

(3) The Board may prescribe in the regulations the procedure and limits of negotiation of a Negotiable Warehouse Receipt.

31. A Warehouse Receipt marked on its face as "Non-Negotiable" and issued to a named person shall be treated as a "Non-Negotiable Warehouse Receipt" and be transferable only by assignment and delivery.

32. An alteration to a Warehouse Receipt shall be regarded as:

(a) immaterial if the alteration does not affect the prior proprietary rights of the holder or convey a false information or misrepresentation;

(b) authorized when made with an implied or direct permission or connivance of the Warehouse Operator and which renders a Warehouse Operator and the perpetrator liable under the provisions of this Act; or

(c) unauthorized when made without fraudulent intent, and made without an implied or direct permission or connivance of the Warehouse Operator and which renders the Warehouse Operator liable according to the terms of the receipt.

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

(2) A purchaser of a Warehouse Receipt shall be regarded to have had notice of alteration, if before the purchase of the Warehouse receipt, the purchaser or his agent took part or influenced the alteration of the Warehouse Receipt.

(3) A purchaser of an altered Warehouse Receipt who has been found or could reasonably be imputed with possession of notice of alteration commits an offence under this Act and liable to be proceeded against under this Act in the same way and manner as the Warehouse Operator.

34. -(1) Any loss, theft or destruction of the Warehouse Receipt shall be reported by the holder of the warehouse Receipt to the Warehouse Operator who shall immediately report the loss to the Agency through the Central Registry.

(2) If a negotiable Warehouse Receipt has been lost, stolen or destroyed, a duplicate may be issued by the Warehouse Operator provided that the request of the holder is accompanied by:

(a) a police report of the loss, theft or destruction of the receipt;

(b) an affidavit of loss, theft or destruction duly sworn to in a court of law;

(c) notice of loss, theft or destruction filed at the Central Registry in the format stipulated by regulations;

(d) proper and reliable identification; and

(e) payment of reasonable costs of the operator to be stipulated on the face of the receipt.

(3) The Board may, by order published in requirements for the issuance of duplicate Receipts.

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

(5) A Warehouse Operator shall not deliver goods which are subject of a loss or missing Warehouse Receipt except with prior notification to the Central Registry and issuance of a duplicate receipt in respect of the goods concerned.

(6) A person who fraudulently obtained using an original Warehouse Receipt which has been reported missing or a Warehouse Receipt in respect of which a duplicate receipt has been issued commits an offence and liable on conviction to five years imprisonment without an option of fine.

(7) A person who after endorsing and delivering a Warehouse Receipt to another fraudulently reports it missing and obtains a duplicate Receipt commits an offence and liable on conviction to five years imprisonment without an option of fine.

35. -(1) A Warehouse Receipt upon the face of which the word 'duplicate' is plainly placed shall be a representation and warranty by the Warehouse Operator that such Warehouse Receipt:

(a) is an accurate copy of the original receipt; and

(b) has the same rights as the original receipt issued and outstanding at the date of issue of the duplicate.

(2) A duplicate receipt issued shall have the same standing as the original and shall not impose upon the Warehouse Operator any less or additional liability.

36. All Warehouse Receipts on commodities financed by banks shall be traded on a commodity exchange.

#### **PART VI - RIGHTS AND OBLIGATIONS OF A WAREHOUSE OPERATOR**

37. A licensed Warehouse Operator may be considered for pioneer status in accordance with the provision of the Nigerian Investments Promotion Commission Act.

38. -(1) Except as provided under this Act or any regulations made from time to time by the Agency, a Warehouse Operator shall deliver stored goods upon demand made by the holder of the Warehouse Receipt or depositor, if the holder or depositor:

(a) makes full payments for the Warehouse Operator's charges for storage and other services relating to the goods;

(b) signs relevant documents proving the delivery of the goods; and

(c) satisfies the Warehouse Operator of the identity of the individual taking possession of goods or where payment in lieu of lien has not been made, after deducting the exact quantity of the goods, value of which at open market value as at that date, is equal to accrued lien due to the Warehouse Operator, plus ancillary costs if any.

(2) A Warehouse Operator shall not issue negotiable Warehouse Receipts for goods in respect of which the Warehouse Operator, its directors or its staff has interest except it has obtained a licence in that regard permitting the Warehouse Operator to trade in goods which he warehouses.

(3) A Warehouse Operator shall not trade in goods which it is licensed to store, except as may be permitted by regulations made by the Agency.

(4) Where a Warehouse Operator by regulation is permitted to trade in its own goods, and in fulfilling any additional condition for grant of the licence, the Warehouse Operator must ensure that:

(a) there is a clear separation of the goods owned by it from other goods it is licensed to store;

(b) there are clear and transparent records available to show the demarcation of the goods;

(c) it issues receipt in respect of its goods indicating that the goods belong to it;

(d) it adheres to such other conditions as the Agency may from time to time impose by regulations.

39. -(1) Subject to section 43 of this Act, a Warehouse Operator shall deliver the goods in accordance with the demand by a Warehouse Receipt holder or, as the case may be, the depositor.

(2) Where a Warehouse Operator refuses to deliver the goods as demanded by the holder or depositor of a Warehouse Receipt the burden shall be upon the Warehouse Operator to establish the existence of any lawful excuse for the refusal.

(3) Where a Warehouse Operator refuses to deliver the goods as demanded by the depositor or holder of a Warehouse Receipt because of the reason that the Warehouse Receipt was altered, the holder or depositor who had notice of alteration shall be prevented from making further demands based on any proprietary rights in the Warehouse Receipt than those provided on the altered Warehouse Receipt.

40. Subject to the provisions of sections 42 and 43 of this Act, a Warehouse Operator shall deliver goods only after being satisfied that:

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

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

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

(2) A Warehouse Operator who:

(a) is informed that the person who claims delivery of the goods is not in fact lawfully entitled to the possession of the goods;

(b) ignores the information not to make delivery of the goods, under paragraph (a) of this subsection; and

(c) had information or knowledge that the delivery about to be made was to a person not lawfully entitled to the possession of the goods, and proceed to deliver the goods; shall be liable for conversion to all persons having proprietary rights in or in the possession of the goods in the exact market value of the goods wrongfully delivered and on conviction to a term of five years imprisonment.

42. The Warehouse Operator shall not be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of a Warehouse Receipt given for the goods at the time of the deposit of the goods, even if such receipt is negotiable, in a situation where goods have been lawfully sold or disposed of-

(a) because of their perishable or hazardous nature; or

(b) to satisfy the Warehouse Operator's lien, provided that in each case the Warehouse Operator shall have given prior notice of sale to the owner or holder of the Warehouse Receipt and shall pay over to the owner sale proceeds in excess of his due lien.

43. -(1) Except as otherwise provided in this Act, where a Warehouse Operator delivers goods for which he had issued a negotiable receipt, he shall retrieve and cancel the receipt.

(2) Where a Warehouse Operator fails to retrieve or cancel the receipt as provided for under subsection (1) of this section, and a third party purchaser without notice acquires title to the receipt, the Warehouse Operator shall remain liable for the market value of the goods.

(3) A Warehouse Operator who delivers goods for which he had issued a negotiable receipt, but fraudulently failed to retrieve and cancel the receipt, commits an offence and liable on conviction to imprisonment for a term of two years and in addition shall pay the exact market value of the goods.

44.-(1) Except as otherwise provided in this Act, where a Warehouse Operator delivers part of the goods for which he had issued a negotiable Warehouse Receipt he shall-

- (a) retrieve and cancel that receipt and issue a new receipt for the remaining goods; or
  - (b) endorse conspicuously on the receipt the number or quantity of the goods and packages delivered.
- (2) Upon cancellation or endorsement of a Warehouse Receipt as provided in subsection(1) of this section, a Warehouse Operator shall immediately register the cancellation or endorsement with the Central Registry.
- (3) A Warehouse Operator who fails to comply with the provisions of subsection (1)of this section, commits an offence and is liable on conviction to imprisonment for a term of three years and in addition liable to pay the market value of the goods not delivered.
- (4) Where a receipt is not retrieved or cancelled as provided under subsection (1) of this section and the purchaser acquires title to the receipt before or after the delivery of any portion of the goods, the Warehouse Operator shall remain liable.

45. A Warehouse Operator who fails to comply with the provisions of section 35 of this Act is liable for failure to deliver goods to a person who acquires in good faith, a lost, stolen or destroyed Warehouse Receipt without notice that a duplicate receipt has been issued or goods already delivered and liable on conviction to imprisonment for a term of not less than one year.

46. -(1) A Warehouse Operator shall take all necessary precautions to ensure that the delivery of goods is made to a person who has lawfully obtained a Warehouse Receipt.

- (2) A Warehouse Operator's title or right to the possession of goods shall only be derived:
- (a) directly or indirectly from a transfer made by a depositor at the time of or subsequent to deposit of goods; or
  - (b) by a Warehouse Operator lien on the goods.
- (3) Unless the title or right to possession of the goods by a Warehouse Operator is obtained in accordance with provisions of subsection (2) of this section no title or right to possession of goods shall exonerate the Warehouse Operator from liability for refusing to deliver the goods according to the terms indicated on the Warehouse Receipt.

47. Subject to the provision of subsection (2) of section 46 of this Act, a Warehouse Operator shall be liable to the holder of a Warehouse Receipt for the goods named in the Receipt not been in existence or by failure of the goods delivered not corresponding with the description in the Warehouse Receipt subject only to changes that may occur in the goods, over time when stored in accordance with the conditions specified in this Act or by regulations made pursuant to this Act.

48. A Warehouse Operator shall register in favour of a depositor of goods in the Central Registry every Warehouse Receipt issued by the Warehouse Operator at a fee to be approved by the Agency.

49. -(1) Except for unavoidable damages or deterioration associated with the nature and type of the goods and mode of storage provided under this Act and regulations made pursuant to this Act, a Warehouse Operator is liable for damages for loss of, or injury to the goods caused by the Warehouse Operator's failure to exercise due and reasonable care as circumstances may demand.

(2) The provision of subsection (1) of this section notwithstanding, the owner of the goods is required to disclose to the Warehouse Operator any peculiarity associated with the goods to be stored.

50. -(1) Unless as may otherwise be prescribed in regulations issued by the Agency, a Warehouse Operator shall keep separate the goods covered by each receipt for ease of identification and delivery of the goods.

(2) Where packing, processing, substitution or other transformation of goods are authorized by the depositor, the transformed products of those goods shall also be kept separate as required at all times.

(3) Fungible goods mixed together under subsection (2) of this section, are owned in common by the persons entitled to them and the Warehouse Operator is severally liable to each owner for that owner's share.

(4) Where as a result of over-issue of receipt, a mass of fungible goods is insufficient to meet all the receipts that the Warehouse Operator has issued against the goods, the persons entitled include all holders to whom over issued receipts have been issued, duly negotiated or otherwise transferred and delivered by the Warehouse Operator who shall cause an endorsement to be made on such receipt in the ratio of the quantity and quality of goods represented in each of the receipt.

(5) A Warehouse Operator may only commingle commodities stored in its Warehouse subject to rules and regulations made from time to time by the Agency regulating commingling of particular goods or classes of goods.

51. -(1) Subject to regulations made from time to time by the Agency, a Warehouse Operator's lien on goods deposited or the proceed of such goods shall derive from all:

(a) lawful charges for storage and preservation of goods;

(b) lawful claims for money advanced, interest, insurance, transportation, labour, weighing, and other charges and expenses in relation to such goods;

(c) reasonable charges and expenses incurred for notice and advertisements of sale; and

(d) sale of the goods where there is default in satisfying the Warehouse Operator's lien.

(2) The term "Warehouse Operator's Lien" used in subsection (1) of this section is the right of a Warehouse Operator to recoup fees and charges for services rendered or supplied or repayment of sums advanced in accordance with the provisions of subsection (1) of this section and the term "right of lien" shall be construed accordingly.

52. A Warehouse Operator's Lien may be enforced subject to the provisions of section 51 of this Act:

(a) against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) against the established interest of the depositor in any other goods deposited with the Warehouse Operator, whether or not deposited by the debtor himself, provided that such exercise of lien shall only be to the extent and value of the established debtors interest in these other goods.

53. A Warehouse Operator shall lose the right to the lien upon the goods by:

(a) surrendering possession of the goods; or

(b) refusing to deliver the goods upon demand made in accordance with the provisions of this Act.

54. Where a negotiable receipt is issued for goods, the Warehouse Operator shall have no lien on goods except for charges for storage, processing or such other endorsements on the face of the receipt as may be prescribed by regulations made under this Act provided that no lien shall be exercised against a third party purchaser for value over any sums or liabilities not expressed on the face of a negotiable receipt.

55. A Warehouse Operator who has a valid lien against the person demanding the goods may refuse to deliver the goods until the lien is satisfied.

56. Other remedies available under the law that a creditor may have against a debtor for the collection from a depositor of all charges and advances which the depositor has expressly or impliedly contracted with a creditor, shall also be available to a Warehouse Operator notwithstanding the Warehouse Operator's Lien on the goods.

57. A Warehouse Operator's lien may be satisfied by:

- (a) the sale of a portion of the deposited goods in satisfaction of the lien and any costs associated with the sale at the prevailing market price;
- (b) other remedies allowed by law for the enforcement of a lien against personal property; or
- (c) any other action for recovery of the Warehouse Operator's claim.

58. -(1) Where the goods are:

- (i) perishable in nature;
- (ii) likely to deteriorate in value;
- (iii) in a state of foul odour;
- (iv) corrosive and leaking;
- (v) highly inflammable or explosive; and
- (vi) likely to cause injury to life and other property, the Warehouse Operator shall give notice to the owner or to the person in whose name the goods are stored as is reasonable and possible under the circumstances, and where the person fails to comply with the notice to remove the goods from the Warehouse, within the time so specified, the Warehouse Operator may sell the goods with or without advertising and satisfy any lien he may have on the goods.

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

## **PART VII - NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS**

59. -(1) A negotiable Warehouse Receipt is negotiated by its endorsement by the transferor and delivery to the transferee and registration of the interest transferred at the Central Registry, provided that the non-registration of the transferred interest shall not at any time give any advantage to the transferor of the interest except otherwise expressly provided by regulations.

(2) Registration of a notice of transfer of interest shall be a notice to the whole world of the transfer.

(3) A negotiable Warehouse Receipt is duly negotiated when negotiated as provided in subsection (1) of this section to another person in good faith and for value.

60.-(1) A Warehouse Receipt holder acquires after negotiation as provided under this Act:

- (a) title to the Warehouse Receipt;
- (b) title to the goods, including, to the extent that such activities are authorized by the depositor and noted on the Warehouse Receipt, the packed, processed, substituted or otherwise transformed goods of the depositor;
- (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the Warehouse Operator after the Warehouse Receipt was issued;

(d) the obligation of the Warehouse Operator to hold or deliver the goods according to the terms of the Warehouse Receipt and any related storage agreement fee; and  
(e) liability to pay outstanding storage charges, advances and other fees endorsed on the Warehouse Receipt.

(2) Title and rights acquired under subsection (1) of this section are not defeated by the surrender of the goods by the Warehouse Operator.

(3) Except where a Warehouse Receipt was originally issued upon delivery of the goods by a person who had no power to dispose of the goods, a lien shall not attach by virtue of any judicial process to goods in the possession of a Warehouse Operator for which negotiable Warehouse Receipt is outstanding, unless the receipt is first surrendered to the Warehouse Operator or its negotiation is enjoined by court order, and the Warehouse Operator shall not be compelled to deliver the goods in accordance with any judicial process until the receipt is surrendered to the Warehouse Operator or made a subject of litigation before a court of competent jurisdiction or arbitral tribunal.

(4) A person who purchases a Warehouse Receipt for value without notice of the judicial or arbitral process takes the goods free of the lien imposed by the judicial arbitral process without removing the liability of the transferor or to any claim against him in that respect.

61. -(1) A Warehouse Receipt once issued creates a charge on the goods deposited at the Warehouse.

(2) A Warehouse Receipt does not confer any right in goods against a person who before the issue of the receipt had a legal interest or perfected security interest in such goods and who neither delivered nor entrusted the goods or any bill of lading, Warehouse Receipt delivery order or other document of title covering the goods to the depositor with actual or apparent authority to ship, store, pack, process, transform or sell the goods; nor acquiesced in the procurement by the depositor or his or her nominee of any Warehouse Receipt or other document of title covering the goods.

(3) A buyer in the ordinary course of business of fungible goods sold and delivered by a Warehouse Operator who is also in the business of buying and selling such goods, takes free of any claim under a Warehouse Receipt even though it has been duly negotiated.

62. -(1) A transferee of a negotiable Warehouse Receipt who has taken the Warehouse Receipt by purchase, delivery and or registration acquires the title and rights which the transferor had or had actual authority to convey.

(2) In the case of a non-negotiable Warehouse Receipt, it shall not be registrable or tradable on a commodity exchange and is only transferable with prior notice in writing to the Warehouse Operator that issued it, the endorsement of both the transferee and the Warehouse Operator on the face of it and delivery to the transferee.

(3) A Warehouse Operator shall not issue a negotiable Warehouse Receipt in respect of goods already covered by a non-negotiable receipt except the non-negotiable receipt has been retrieved and cancelled.

63. -(1) A transferee of a duly negotiated Warehouse Receipt, shall acquire against the transferor, the title to the goods.

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

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

64. -(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 the endorsement is essential for registration of the transferred interest.

(2) All negotiable Warehouse Receipts transferred shall be endorsed and the endorsed interest registered at the Central Registry.

(3) The endorsement, delivery or registration 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 endorser.

65. -(1) The negotiation of transfer by delivery, endorsement and registration of new interest in the Warehouse Receipt for value, shall be an adequate proof or warranty for a third party purchaser for value without notice that the person who negotiates, transfers, delivers and in the case of non-negotiable warehouse receipts assigns that Warehouse Receipt does so because:

(a) the receipt is genuine; and

(b) has a legal right to negotiate, transfer or deliver the Warehouse Receipt.

(2) The transfer of goods in a contract between the parties relating to a Warehouse Receipt implies that the goods involved are merchantable and fit for that particular purpose.

(3) Warranty shall not be implied in respect of other liabilities endorsed on the Warehouse Receipt.

#### **PART VIII - ESTABLISHMENT OF THE CENTRAL REGISTRY**

66. There is established a Central Registry for Warehouse Receipts (in this Act referred to as "the Central Registry") which shall be operated by the Agency and located in the Federal Capital Territory, Abuja.

67. -(1) The Secretary to the Agency shall be the Registrar of the Central Registry and responsible for registering Warehouse Receipts or any transaction relating to a Warehouse Receipt issued under this Act.

(2) The Agency may, with the approval of the Board, appoint a deputy Registrar and other officers to assist the Registrar in the discharge of its duties under this Act, provided that both the Registrar and the deputy Registrar shall be legal practitioners of not less than ten years post call experience.

68. -(1) The Registrar shall receive and register Warehouse Receipts issued under this Act and register any cancellation, modification, or endorsement to the Warehouse Receipts and do all such other things as the Board or the Agency may from time to time direct.

(2) A Warehouse Operator issuing a negotiable Warehouse Receipt shall at the cost or fee prescribed by the Agency cause the Warehouse Receipt to be registered at the Central Registry.

(3) An original duplicate copy of a Warehouse Receipt delivered by a Warehouse Operator to the Registrar for registration or otherwise may be registered in the manner prescribed by regulations.

69. -(1) A Warehouse Receipt issued in accordance with the provisions of this Act shall be delivered to the Registrar for registration within fourteen days of issuance and transfer of interest shall be registered subject to regulations by the Agency within three working days of delivery and endorsement.

(2) A Certificate of Registration signed by the Registrar shall be conclusive evidence of registration of interest in a Warehouse Receipt.

70. -(1) The Registrar shall maintain a Register containing in a consecutive or chronological order all transactions carried on at the Central Registry.

(2) Provision shall be made at the Central Registry for on-line operations.

(3) The Agency may by regulations prescribe the modalities for on-line transactions at the Central Registry.

71. The Agency shall make such regulations and rules as are necessary for the day to day operations of the Central Registry.

#### **PART IX - RESOLUTION OF DISPUTES**

72. -(1) Where a dispute exists relating to a Warehouse Receipt transaction exists between the depositor and Warehouse Operator, such dispute shall, first be referred to the Agency for settlement.

(2) In the settlement of a dispute the Agency may, afford the parties to such dispute, an informal hearing, to determine if a real dispute exists.

(3) Where the Agency is not able to resolve a dispute it shall refer the dispute to the Arbitral Panel (referred to in section 73 of this Act) within twenty-one days of receipt of the notice of dispute.

73. -(1) For the purpose of resolving disputes under this Part, an Arbitral Panel shall be set up by the Agency in accordance with the provisions of the Arbitration and Conciliation Act Cap 18 Laws of the Federation of Nigeria, 2004.

(2) The Arbitral Panel shall determine any dispute referred to it by any of the party to the dispute or the Agency.

(3) The Arbitral Panel shall conclude hearing on a matter referred to it and deliver a decision within thirty working days from the date of referral.

74. If more than one person claims title to goods covered or purported to be covered by a Warehouse Receipt, the Warehouse Operator is permitted to delay the delivery until the Warehouse Operator has ascertained the validity, within a reasonable time, of the adverse claims or to bring an action to compel all claimants to interplead including compelling the interpleader, either in defending an action for non delivery of the goods, or by original action, whichever is appropriate.

#### **PART X - OFFENCES AND PENALTIES**

75. -(1) A person, who, after the commencement of this Act and the expiration of the designated period under subsection 910 of section 14 of this Act, operates a commercial Warehouse without obtaining a license as required under this Act, commits an offence and liable on conviction to a term of imprisonment not exceeding five years, or to a fine not below three million Naira or to both fine and imprisonment.

(2) A person who continues to operate a commercial Warehouse after the suspension or revocation of its operating license in accordance with the provisions of this Act commits an offence and liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding two million Naira or to both fine and imprisonment.

76. A Warehouse Operator, its employee, agent, or servant who issues or aids in the issuance of a receipt knowing that the goods for which such receipt is issued have not been received by the Warehouse Operator, or are not under his direct control at the time of issuing such receipt, commits an offence and liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding five million Naira or to both fine and imprisonment.

77. A Warehouse Operator, its employee, agent or servant who fraudulently issues or aids in the fraudulent issuance of a receipt for goods knowing that the receipt contains a false statement, commits an offence and liable on conviction to imprisonment for a term not exceeding three years or to a fine of not less than one million Naira or to both fine and imprisonment.

78. -(1) A Warehouse Operator, its employee, agent, or servant, who issues or aids in the issuance of a duplicate or additional negotiable receipt for the same goods or any part thereof which is outstanding and uncanceled, without plainly placing on the face of the Warehouse Receipt the word "Duplicate" commits an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine of not less than one million Naira or to both fine and imprisonment.

(2) The provision of this section shall not apply where a duplicate of a Warehouse Receipt is issued in accordance with the provisions of this Act.

79. -(1) Where there are deposited with or held by a Warehouse Operator goods of which he or his agent or servants are employees, owners without appropriate licensing, either solely or jointly or in common with others then such Warehouse Operator, his employees, agents or servants who, aware of this ownership and issues or aids in issuing a negotiable receipt for such goods without the license to do so, commits an offence and on conviction be liable to a term not exceeding three years or to a fine not below five million Naira or to both fine and imprisonment.

(2) A Warehouse Operator licensed to trade in goods which he stores, who fails to comply with the terms and conditions of such license shall be liable to a fine of the sum imposed by the Agency and revocation for its license to operate a commercial warehouse or such other conditions as the Agency may impose.

80. A Warehouse Operator, or any of its employee, agent or servant who delivers goods out of the possession of such Warehouse Operator, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such receipt is outstanding and uncanceled, without obtaining possession of that Warehouse Receipt at or before the time of such delivery, and cancelling same, shall be liable to imprisonment for a term not exceeding two years, or to a fine of not less than five hundred thousand Naira or to both fine and imprisonment.

81. A person who:

(a) deposits goods to which he has no title, or upon which there is a lien or mortgage;

(b) takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of lien or mortgage; commits an offence and liable on conviction to imprisonment for a term not exceeding seven years or to a fine not exceeding five million Naira or to both fine and imprisonment.

82. A person who obstructs a Warehouse Inspector or any other authorized person in the exercise of the power conferred upon him by this Act or who neglects or refuses to produce to a Warehouse Inspector or any other authorized person, any goods, documents, book of accounts or other such records, commits an offence and liable on conviction to imprisonment for three months or to a fine not exceeding five hundred thousand Naira.

83. A person who falsifies, tampers with or in any way alters a registered document, interest or records of the Central Registry commits an offence and liable on conviction to imprisonment for a term not exceeding seven years or to a fine of not less than five million Naira or to both fine and imprisonment.

84. A person who aids or abets the commission of an offence under this Act commits an offence and liable on conviction to imprisonment for a term of three years or a fine in the same amount as prescribed for the offence or to both fine and imprisonment.

85. A person who contravenes any of the provisions of this Act, to which no specific penalty is provided shall be liable on conviction for every such offence to imprisonment for a term not exceeding two years or to a fine not below one million Naira or to both fine and imprisonment.

#### **PART XI - FINANCIAL PROVISIONS**

86. -(1) The funds of the Agency shall consist of:

- (a) such sums of money as may be appropriated by the National Assembly;
- (b) moneys received by the Agency from inspecting and supervising Warehouses;
- (c) moneys borrowed by the Agency;
- (d) moneys derived from the sale of Warehouse Receipt books; and
- (e) any other monies received by or donated or made available to the Agency for the purpose of performing its functions under this Act.

(2) The Agency shall not accept gifts or donations of monies where such gifts and donations are inconsistent with the aims and objectives of this Act.

87. The Agency shall perform its functions in accordance with sound and internationally accepted financial principles.

88. The Agency shall open and maintain such bank accounts as are necessary for the performance of its functions in accordance with extant rules and regulations of the Federal Government.

89. The Agency may, with the approval of the Board, borrow such sums of moneys as may be required for the efficient discharge of its functions under this Act.

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

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

(3) Such estimates as approved under subsection 1 of this section shall be presented to the National Assembly for annual budgetary appropriation.

91. -(1) The Board shall ensure that the Agency keeps proper accounts and records of its transactions and affairs.

(2) The Board shall also ensure that:

- (a) all monies received by the Agency are properly accounted for;
- (b) all payments of monies are correctly made and properly authorized; and
- (c) adequate control is maintained over the Agency's property and its expenditure.

(3) The Board shall cause to be prepared for each financial year, and not later than three months after the close of the financial year, a statement of accounts which shall include a report on the performance of the Agency during that financial year, comprising of a balance sheet, a profit and loss account and application of funds statement.

92. -(1) The accounts of the Agency shall, in respect of each financial year, be audited by the Auditor General of the Federation or by an auditor appointed by the Auditor General of the Federation.

(2) The Board shall ensure that within four months after the close of each financial year, the statement of accounts referred to in subsection (3) of section 93 of this Act is submitted for auditing.

(3) The Auditor General of the Federation or any auditor appointed by the Auditor General of the Federation shall have access to all books of accounts, vouchers and other financial records of the Agency and is entitled to any information and explanation required in connection with such books, vouchers or records.

(4) The Auditor General of the Federation shall, within two months after the receipt of the statement of accounts referred to in subsection (2) of this section, audit the accounts and deliver to the Board the audited account together with the Auditor's report.

(5) The Board, shall as soon as possible upon receiving the audited account deliver to the Minister a copy of the audited accounts together with the auditor's report referred to in subsection (4) of this section and cause the audited account and report to be published in two national daily newspapers.

93. -(1) The financial year of the Agency shall be in accordance with the Financial Year Act or in accordance with any other legislation passed by the National Assembly for that purpose.

(2) Except that the first financial year of the Agency may be a shorter period commencing on the date on which the Agency is established and ending as nearly as close as is possible to the financial year end for that particular year, but not later than four months thereof, but if established any time from October in any year the first financial year end shall be the financial year end for the next year.

94. The Board shall not later than three months after the end of a financial year ensure that it prepares, and widely publishes an annual performance report containing and reflecting an assessment of the Agency's performance of its goals for the year, complaints received and dealt with and such other issues as the Minister may from time to time direct the Board to report to the public.

95. The Agency shall cause to be prepared and submit to the Board within three months after the end of each financial year, an annual report on the activities and operations of the Agency for that financial year.

96. The Minister may issue directives of a general nature or relating generally to particular matters, but not any particular individual person or to any particular case, with regard to the exercise by the Agency of its functions.

## **PART XII - MISCELLANEOUS PROVISIONS**

97. The revocation or termination of a license pursuant to the provisions of this Act shall not affect the validity of receipts issued under the license, and the Warehouse Operator shall continue to comply with the provision of this Act with regard to receipts validly issued.

98. -(1) Subject to regulations issued from time to time by the Agency, a Warehouse Operator shall subject to other provisions of this Act, ensure that goods in its custody are at all times insured against all common perils such as but not limited to loss by fraud, theft, fire, employee infidelity, disasters including drought, flooding, sabotage, internal explosion, windstorm and any other disasters or perils and such other perils as the Agency may determine by regulations made under this Act.

(2) A Warehouse Operator shall keep exposed in a conspicuous place in the Warehouse, a notice in bold letters stating briefly the conditions under which the goods are insured under this Act.

(3) A Warehouse Operator shall take prompt steps as may be necessary and proper to collect any money which becomes due under a contract of insurance entered into by the Warehouse Operator for the purpose of fulfilling the insurance and bonding requirements under this Act, and shall as soon as the money is collected, promptly pay any person entitled to receive the money.

(4) A Warehouse Operator shall where appropriate for the purpose of fulfilling the insurance and bonding requirements under this Act, pay premiums, permit inspections and make reports as may be required under the terms of its contracts with insurance and bonding companies.

99. The Agency or its appointed agent may inspect any licensed Warehouse with a view to investigating and ascertaining the-

- (a) storage facilities in the Warehouse;
- (b) classification of goods;
- (c) weighing arrangement;
- (d) certification of goods; and
- (e) compliance with the provisions of this Act

100.-(1) The Board may, by notice published in the Gazette classify a licensed Warehouse in accordance with its -

- (a) single or group of commodities which it is licensed to store;
- (b) ownership;
- (c) location;
- (d) surroundings;
- (e) capacity;
- (f) conditions or other qualities; and
- (g) such other classification as the Board may from time to time prescribe.

(2) The Board may prescribe different types of licenses that may be issued relating to different classes of Warehouses with a view to maintaining standards.

101. The Agency shall, in consultation with the Board, by notice published in the Gazette, prescribe the fees to be charged in respect of-

- (a) examination and inspection of Warehouses;
- (b) licenses issued under the Act;
- (c) renewal of licenses;
- (d) issue of negotiable Warehouse Receipt books; and
- (e) carrying out and performing such other functions conferred on it under this Act or by regulations made pursuant to this Act.

102. A member of the Board or any employee or other person performing any function of the Agency under the direction of the Board shall not be personally liable for any civil proceedings or for any act or omission carried out in good faith, in accordance with the law, rules and regulations and in the regular performance of his or her functions.

103. -(1) The Board may make regulations generally for the carrying out of the provisions and purposes of this Act and may, in particular make regulations-

- (a) prescribing the procedures and limits of negotiation of a negotiable Warehouse Receipt;
- (b) prescribing a standard format of a Warehouse Receipt;
- (c) determining the standards or requirements for allowing a Warehouse Operator to sell or dispose of goods, which are perishable or hazardous;
- (d) determining the manner of keeping depositors goods in a Warehouse;
- (e) determining goods which may be mixed in the Warehouse receipt;
- (f) prescribing ways of recovering the Warehouse Operator's Lien by sale of goods;
- (g) prescribing conditions for the registration of the Warehouse;
- (h) prescribing conditions that may be inscribed on the Warehouse license;
- (i) prescribing Warehouse registration and license application procedure;
- (j) prescribing Warehouse registration and license appeal procedure;
- (k) prescribing the qualifications of the employees that may be employed by a Warehouse Operator;
- (l) prescribing procedure for dispute resolution pursuant to this Act; and
- (m) allowing Warehouse Operators to trade in goods they are licensed to store and prescribing detailed and strict conditions for such trade if and when allowed.

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

104. In this Act, unless the context otherwise requires:

'Agency' means the Nigerian Independent Warehouse Regulatory Agency established under section 1 of this Act;

'appropriate authority' or Minister means the Minister in charge of trade and investment;

'Arbitral Panel or Panel' means the panel established under section 73;

'Board' means the governing board of the Agency established under section 2 of this Act;

'bond', has the meaning ascribed to it by section 18 of this Act;

'Central Registry' means the Central Registry established under section 66 of this Act;

'commodity' under this Act includes raw, conditioned, agricultural produce, solid minerals or products in liquid or gaseous form and such other goods as the Agency shall from time to time, following a viability study and after stakeholder consultation with approval of the Minister designate as commodities for storage in commercial Warehouses.

'commingle' means the storage of commodities by class, under circumstances other than identity preserved;

'conditioning' include the process of drying and cleaning of commodities;

'court' means the Federal High Court.

'depositor' means any person who deposits a commodity in a Warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding Warehouse Receipt or who is lawfully entitled to possession of the commodity;

'delivery' means voluntary transfer of possession from one person to another

'fungible goods' means goods of which any unit, from its nature or by mercantile custom, treated as equivalent of any other unit;

'goods' for the purposes of this Act shall mean commodities  
'holder' means a person who is in possession of a Warehouse Receipt whether negotiable or non negotiable, and who has proprietary interest in the goods;  
'identity preserved' means the handling of a commodity in such a manner that guarantees the return of the actual quality and quantity of the commodity to the depositor;  
'license' means a license issued under this Act and includes any renewals and amendments of the license except where the context otherwise requires;  
'licenced Warehouse' means any Warehouse for which the Agency, subject to other terms and requirements of the Act, has issued a license;  
'Minister' means the Minister responsible for trade and investment;  
'order' means an order by endorsement on the Warehouse receipt;  
'person' means any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity;  
'prescribe' means prescribe in the regulations;  
President' means the President of the Federal Republic of Nigeria;  
'revocation' means the permanent removal of a Warehouse Operator's license by the Agency pursuant to the powers conferred on it under this Act;  
'suspension' means the temporary removal of a license actuated by any action or measure taken pursuant to the provisions of this Act;  
'Warehouse' or 'commercial Warehouse' under this Act mean any building, structure or other protected enclosure approved by the Agency to be used or useable, for the storage or conditioning of commodities or buildings used for storage purposes or including operation of a Warehouse which issue or purport to issue Warehouse receipt;  
'Warehouse Operator' means a person registered under this Act engaged in the business of operating a Warehouse for receiving, storing, shipping or handling of commodities for compensation and includes the agent or employee the scope of whose actual or apparent authority renders such person to exercise rights or become liable under the Act; and includes directors and shareholders of a limited liability company licensed under this Act.  
'Warehouse Receipt' means a document of title to specific goods of a certain quality and quantity stored in a licensed, bonded and named Warehouse which may be negotiable or non-negotiable.

105. This Act may be cited as the Warehouse Receipts and Other Related Matters Bill, 2022 (SB. 851)..

## **SCHEDULE**

### **MEETINGS OF THE BOARD**

#### **Convening Meetings**

1. -(1) The Chairman shall convene the first meeting of the Board as soon as is practicable after the appointment and inauguration of the Board and thereafter the Board shall meet for the transaction of business at times and places that may be decided upon by the Board but the Board shall meet once every three months.
- (2) The Chairman or, in the absence of the Chairman, a member of the Board appointed by the Board to act as Chairman may from time to time call a special meeting of the Board, or shall call a special meeting upon a written request by a majority of the members of the Board.
- (3) The Chairman shall preside at all meetings of the Board and in his or her absence, the members present may appoint a member from amongst themselves to preside at that meeting.

## **2. Quorum**

The quorum at a meeting shall be seven members.

## **3. Decision Making**

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

## **4. Disclosure of Interest**

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

(2) A disclosure of interest under subparagraph (1) of this paragraph shall be recorded in the minutes of the meeting of the Board and the member making the disclosure shall not, unless the Board otherwise determines in respect of that matter-

(a) be present during any deliberation on the matter by the Board; and

(b) take part in the decision making of the Board on the matter.

(3) For the purpose of the making of a decision by the Board under subparagraph (2) of this paragraph the member who has made the disclosure shall not-

(a) be present during the deliberations of the Board for the making of that determination; and

(b) influence any other member or take part in the making of the determination by the Board.

Co-option of Persons to Meetings of the Board

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

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

## **6. Minutes of Meetings**

-(1) The Board shall cause the minutes of its meetings to be recorded and kept and the minutes of each meeting shall be reviewed and adopted by the Board at the next meeting and signed by the Chairman of the meeting.

(2) The Chairman of the Board shall submit to the Minister a copy of the minutes of each meeting as soon as the minutes have been reviewed and adopted.

Board to Regulate its Own Procedure

7. Subject to the provisions of this Schedule, the Board may regulate its own proceedings.

Seal of the Agency

8. -(1) The Common seal of the Agency shall be such device and in such form as the Board may determine and shall be authenticated by the signatures of the Director-General and the Secretary.

(2) In the absence of the Director-General, the person performing the functions of the Director-General shall sign.

(3) The signature of the Director-General shall be independent of the signing by any other person as a witness.

(4) Every document purporting to be an instrument issued by the Agency and to be sealed with the seal of the Agency authenticated in the manner prescribed in subparagraphs (2) and (3) of this paragraph shall be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown.

(5) The seal of the Agency shall be kept in the custody of the Secretary.

#### **EXPLANATORY MEMORANDUM**

This Act seeks to:

- (a) establish the Nigerian Independent Warehouse Regulatory Agency to regulate the operations of licensed warehouses and to provide a regulatory framework for trading in warehouse receipts and for other related matters;
- (b) enable depositors store agricultural or other commodities in commercial warehouses and upon issue of negotiable warehouse receipt by the warehouse, be able to use it as collateral to obtain finance from a financial institution; and
- (c) make warehouse receipt valid negotiable instruments.