

MALAWI GOVERNMENT

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Act

No. 3 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

24th January, 2018

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An Act to provide for warehouse receipts and warehousing; the negotiation and transfer of warehouse receipts and for matters connected thereto

ENACTED by the Parliament of Malawi, as follows—

PART I—GENERAL

1. This Act may be cited as the Warehouse Receipts Act, 2017 and shall come into force on a day as the Minister may appoint by notice published in the *Gazette*. Citation and commencement
2. In this Act, unless the context otherwise requires— Interpretation
 - “bailee” means a person that, by a warehouse receipt, acknowledges possession of goods and contracts to deliver those goods;
 - “bearer” means a person in possession of a negotiable warehouse receipt that is payable to bearer or endorsed in blank;
 - “buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person to the goods, in the ordinary course, from a person in the business of selling those goods but does not include a person that acquires goods in a transfer in bulk or as security for, or in total or partial satisfaction of a money debt;
 - “delivery order” means a record that contains an order to deliver goods directed to a warehouse;
 - “field warehouse” means a storage facility occupied and operated as a warehouse on a temporary basis for the purpose of possessing and controlling deposited goods and issuing warehouse receipts on behalf of a buyer, seller or financier of the goods;
 - “fungible goods” means—
 - (a) goods of which any unit, by nature or usage of trade, is

the equivalent of any other like unit; or

(b) goods that by agreement are treated as equivalent;

“goods” means all things that are treated as movable or personal property for the purposes of a contract for storage or transportation;

“good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing;

“holder” means any person in possession of a warehouse receipt which makes goods deliverable either to bearer or to the order of the person in possession;

“issuer” means a bailee that issues a warehouse receipt or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver and includes a person for whom an agent or employee purports to act in issuing a document, if the agent or employee has real or apparent authority to issue documents, even where—

(a) the issuer did not receive any goods;

(b) the goods were misdescribed; or

(c) in any other respect the agent or employee violated the issuer’s instructions;

“person entitled under a warehouse receipt” means a holder, in the case of a negotiable warehouse receipt, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under a non—negotiable warehouse receipt, in both cases whether in paper or electronic form;

“purchase” includes taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property;

“record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and is accessible so as to be usable for subsequent reference;

“security interest” has the meaning ascribed to the term in the Personal Property Security Act, 2013;

“perfected security interest” has the meaning ascribed to the term in the Personal Property Security Act, 2013;

“signature” means, with a present intent to authenticate or adopt a record,—

(a) to execute or adopt a tangible symbol; or

(b) data in electronic form which is attached to, or logically associated with, other electronic data which served as a method of authentication;

“warehouse” means storage facility occupied and operated by a warehouse operator for the purpose of possession and control of deposited goods and issuance of warehouse receipts on behalf of a depositor, buyer, seller or financier of such goods;

“warehouse operator” means a person engaged in the business of hiring out warehouses or parts thereof for the purpose of storage of goods within the territory of Malawi; and

“warehouse receipt” means a document of title issued under this Act and section 2(1) of the Personal Property Security Act, 2013 by a warehouse operator, and includes a warehouse keeper’s certificate, a warrant as defined in the Sale of Goods Act and a certificate of deposit or storage agreement made in accordance with section 5 of this Act.

3. This Act applies to a warehouse receipt that is issued or a bailment in relation to goods in storage. Application

PART II—ISSUANCE AND FORM OF WAREHOUSE RECEIPTS

4. Any warehouse operator or person authorised to act as such may issue a warehouse receipt. Issuance of warehouse receipt

5.—(1) A warehouse receipt may be issued in any format. Format of warehouse receipt

(2) Notwithstanding the generality of subsection (1), a warehouse receipt shall, at a minimum, provide for—

(a) a statement of the location of the warehouse facility where goods covered by the receipt are stored;

(b) the date of issue of the receipt;

(c) the unique identification code of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(e) the rate of storage and handling charges which may be incorporated by reference to an underlying storage agreement, unless goods are stored under a field warehousing arrangement, in which case, a statement of that fact shall be sufficient on a non-negotiable receipt;

(f) a description of the goods or the packages containing them;

(g) the signature of a warehouse operator or its agent;

(h) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest:

Provided that, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt is unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities shall be sufficient.

(3) A warehouse operator shall be liable for damages caused to a person by omission of any of the information in subsection (2).

(4) A warehouse operator may insert in a warehouse receipt, any terms that are not contrary to this Act or the express provisions of any other applicable law, that do not impair its express obligations of delivery or its express duty of care prescribed under this Act.

Form of a
warehouse
receipt

6. A warehouse receipt may be issued in either electronic or paper form.

Control of an
electronic
warehouse
receipt

7.—(1) A person shall have control of an electronic warehouse receipt where a system employed for evidencing transfer of interests in an electronic document reliably establishes that person as the person to whom the electronic document was issued or transferred.

(2) A system shall satisfy subsection (1), and a person shall be deemed to have control of an electronic warehouse receipt, if the document is created, stored, and assigned in a manner that—

(a) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subparagraphs (d), (e) and (f), unalterable;

(b) the authoritative copy identifies the person asserting control—

(i) as the person to which the document was issued; or

(ii) as the person to which the document was most recently transferred, if the authoritative copy indicates that the document has been transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or a designated custodian;

(d) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy or any copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

8.—(1) Upon request of a person entitled under an electronic warehouse receipt, an issuer of an electronic warehouse receipt may print and issue warehouse receipt as a substitute for the electronic document if—

Reissuance of
warehouse
receipt in
alternative
medium

(a) the person entitled under the electronic document surrenders control of the document to the issuer; and

(b) the printed document when issued, contains a statement that it is issued in substitution for the electronic document.

(2) Upon issuance of a printed warehouse receipt in substitution for an electronic warehouse receipt in accordance with subsection (1),—

(a) the electronic document shall cease to have any effect or validity; and

(b) the person that procures issuance of the printed warehouse receipt warrants to all subsequent persons entitled under the printed document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(3) Upon request of a person entitled under a printed warehouse receipt, an issuer of the printed document may issue an electronic warehouse receipt as a substitute for the printed document if—

(a) the person entitled under the printed document surrenders possession of the document to the issuer; and

(b) the electronic document, when issued, contains a statement that it is issued in substitution for the printed document.

(4) Upon issuance of an electronic warehouse receipt in substitution for a printed warehouse receipt in accordance with subsection (3)—

(a) the printed document shall cease to have any effect or validity; and

(b) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled

under the printed document when the warrantor surrendered possession of the printed document to the issuer.

Negotiable
warehouse
receipt

9. A warehouse receipt shall be negotiable if, by its terms, the goods are to be delivered to bearer or to the order of a named person.

Non-negotiable
warehouse
receipt

10. A warehouse receipt other than one described under section 9 shall be non-negotiable, or if at the time it is issued, the document contains a conspicuous statement to the effect that it is non-negotiable.

Alteration of
warehouse
receipt

11. An alteration in a warehouse receipt shall not be made without the authority of a warehouse operator that issued it and the bearer of the receipt.

Right of
purchaser of
altered
warehouse
receipt

12. If a blank in a negotiable printed warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority, may treat the insertion as authorized.

(2) Any other unauthorized alteration shall render any paper or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Liability for
non-receipt or
misdescription
of goods
covered by
warehouse
receipt

13. A party to or purchaser for value in good faith of a warehouse receipt who relies on the description of goods in the warehouse receipt, may recover from the issuer, damages caused by the non-receipt or misdescription of the goods in the warehouse receipt, except to the extent that—

(a) the document conspicuously and clearly indicates that the issuer does not know whether all or part of the goods were in fact received or conform to the description, such as a case in which the goods are deposited in bags, packages or other containers and the description is in terms of marks or labels or kind, quantity, or condition, the receipt or description is qualified by “contents, “condition, and quality unknown”, “said to contain”, or words of similar import, and the indication is true; or

(b) the party to or purchaser otherwise has notice of the non-receipt or misdescription.

Duplicate
warehouse
receipt and
over-issue

14.—(1) A warehouse operator shall not generally issue more than one warehouse receipt for the same goods deposited by any person:

Provided that in case of a loss or destruction of the warehouse receipt, a duplicate receipt may be issued.

(2) A receipt on the face of which the word “duplicate” is plainly

marked shall be a representation and warranty by the warehouse operator that it is an accurate copy of the original receipt properly issued.

(3) A duplicate or any other warehouse receipt purporting to cover goods already represented by an outstanding document of the same issuer shall not confer any right in the goods, except as provided in the case of over-issue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 8.

(4) The issuer shall be liable for damages caused by its over-issue or failure to identify a duplicate document by a conspicuous notation.

PART III—RIGHTS AND OBLIGATIONS OF WAREHOUSE OPERATORS

15. A warehouse operator shall take reasonable care of goods stored in a warehouse covered by a warehouse receipt.

Duty of care
of a
warehouse
operator

16.—(1) A warehouse operator shall be liable for damages for loss of or damage occasioned to goods stored by the warehouse operator caused by the warehouse operator's failure to exercise reasonable care with regard to the goods.

Limitation of
a warehouse
operator's
liability

(2) A warehouse operator may insert a term in a warehouse receipt or storage agreement, to limit the amount of the warehouse operator's liability in the case of loss or damage to goods stored in a warehouse and this term shall be made known to the person storing the goods.

(3) The limitation of liability in subsection (2) shall not be effective with respect to the warehouse operator's liability for conversion to the warehouse operator's own use, of goods under storage.

(4) On request of a bailor on record at the time of signing a storage agreement, or within a reasonable time after receipt of a warehouse receipt, the warehouse operator's liability may be increased on part or all of the goods covered by the warehouse receipt and increased storage rates may be charged based on an increased valuation of the goods.

(5) A warehouse receipt may include provisions as to the time and manner of presenting claims and commencing actions based on a bailment.

(6) This section shall apply in addition to any other law that

imposes a higher responsibility upon the warehouse or invalidates a contractual limitation that would be permissible under this Act.

Storage of
goods

17.—(1) Unless a warehouse receipt provides otherwise, a warehouse operator shall keep separate, goods covered by each warehouse receipt so as to permit, at all times, identification and delivery of those goods.

(2) Notwithstanding section (1), different lots of fungible goods may be commingled.

(3) If different lots of fungible goods are commingled, the goods shall be owned in common, by the persons entitled to those goods and the warehouse operator shall be severally liable to each owner for each owner's share.

(4) If, because of over-issue of warehouse receipts, a mass of fungible goods is insufficient to meet all the receipts that the warehouse operator issued against it, the persons entitled shall include all holders to which over-issued receipts have been duly negotiated.

Buyer of
fungible goods

18.—(1) A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse operator that is also in the business of buying and selling the goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Act No. 8 of
2013

(2) The buyer may also take free of any security interest as long as it has satisfied the requirements of section 48 of the Personal Property Security Act, 2013.

Termination
of storage at
warehouse
operators'
option

19.—(1) A warehouse operator may, by giving notice to the person on whose account goods are held and any other person with or known to claim an interest in the goods, require payment of any charges and removal of goods from the warehouse at the termination of the period of storage fixed by the warehouse receipt or, if a period is not fixed, within a stated period of not less than thirty days after the warehouse operator gives the notice.

(2) If the goods are not removed before the date specified in the notice, the warehouse operator may sell goods pursuant to section 21.

(3) If a warehouse operator, in good faith, believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (1) and section 21, the warehouse operator may specify in the notice given under subsection (1), any reasonable shorter time for removal of the goods.

(4) If the goods are not removed, after the notice is given, the warehouse operator may sell the goods at a public sale held not less than seven days after a single advertisement in a public place near the intended place of sale.

(5) If, as a result of quality or condition of the goods in storage of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, warehouse facilities, or other persons, the warehouse operator may sell the goods at public or private sale without advertisement or posting, on reasonable notification to all persons known to claim an interest in the goods.

(6) If, the warehouse operator after a reasonable effort is unable to sell the goods, the warehouse operator may dispose of the goods in any lawful manner and shall not incur liability by reason of that disposition.

(7) A warehouse operator shall deliver the goods to any person entitled to them upon due demand made at any time before sale or other disposition pursuant to this section.

(8) A warehouse operator may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse operator would have been bound to deliver the goods.

20.—(1) A warehouse operator shall have a lien against a bailor on goods covered by a warehouse receipt or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labour, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or expenses reasonably incurred in the lawful sale of the goods.

Lien of a
warehouse
operator

(2) If the person on whose account the goods in subsection (1) are held is liable for similar charges or expenses in relation to other goods whenever deposited with a warehouse operator, and it is stated in a warehouse receipt that a lien is claimed for charges and expenses in relation to the other goods, the warehouse operator shall also have a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse operator.

(3) As against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien shall be limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the warehouse receipt.

(4) A warehouse operator may also reserve a security interest against a bailor for the maximum amount specified on the warehouse receipt for charges other than those specified in subsection (1) including money advanced and interest thereon.

Act No. 8 of 2013 (5) The security interest in subsection (4) shall be governed by the Personal Property Security Act, 2013.

(6) A warehouse operator's lien for charges and expenses under subsection (1) or a security interest under subsection (2), shall also be effective against any person that entrusted a bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid.

(7) The lien or security interest in subsection (6) shall not be effective against a person that, before issuance of a warehouse receipt, had a legal interest or a perfected security interest in the goods, who did not —

(a) deliver or entrust the goods or any warehouse receipt covering the goods to a bailor or the bailor's agent or other nominee with—

(i) actual or apparent authority to ship, store, or sell the goods;

(ii) power to obtain delivery under section 29; or

(iii) power of disposition under any law;

(b) acquiesce in the procurement by the bailor or its nominee, of any warehouse receipt or delivery order.

(8) A warehouse operator's lien on household goods for charges and expenses in relation to the goods under subsection (1) shall also be effective against all persons if the depositor was the owner or other authorized possessor of the goods at the time of deposit.

(9) A warehouse operator loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Enforcement of a warehouse operator's lien **21.—**(1) A warehouse operator may enforce its lien on goods stored in bulk or in packages, by public or private sale at any time or place, and on any terms that are commercially reasonable, after notification is sent to a bailor and the persons known by the warehouse operator to claim an interest in the goods.

(2) The notification of sale in subsection (1) shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale.

(3) The fact that a better price could have been obtained by a sale at a different time or method from that selected by the warehouse

shall not of itself, be sufficient to establish that the sale was not made in a commercially reasonable manner.

(4) The warehouse operator shall be deemed to sell goods in a commercially reasonable manner if the warehouse operator sells the goods in the usual manner in any recognized market, at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold.

(5) A sale of more goods than apparently necessary to ensure satisfaction of the warehouse operator's lien shall not be commercially reasonable, except in cases covered by subsection (4).

(6) A warehouse operator may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if a notification has been sent to all persons known by the warehouse operator to claim an interest in the goods and the notification includes—

(a) an itemized statement of the claim;

(b) a description of the goods subject to the lien;

(c) a demand for payment within a specified period of not less than ten days after receipt of the notification; and

(d) a conspicuous statement that, unless the claim is paid within the specified time, the goods will be advertised for sale and sold by auction at a specified time and place.

(7) The sale shall conform to the terms of the notification in subsection (6) and shall be held at the nearest suitable place to where the goods are held or stored.

(8) After the expiration of the period given in the notification in subsection (6), an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general wide circulation in the area where the sale is to be held:

Provided that if there is no newspaper of general wide circulation in the area where the sale is to be held, the advertisement shall be posted at not fewer than six conspicuous places in the neighbourhood of the proposed sale, at least ten days before the sale.

(9) The advertisement shall include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale.

(10) The sale shall take place at least fifteen days after the first publication of the notice.

(11) Before any sale is made pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien on the goods and the reasonable expenses incurred in compliance with this section and in that event, the goods may not be sold but shall be retained by the warehouse operator subject to the terms of the warehouse receipt and this section.

(12) The warehouse operator that stored the goods that are subject to the sale may buy the goods at any public sale held pursuant to this section.

(13) A purchaser in good faith of goods sold to enforce a warehouse operator's lien shall take the goods free of any rights of persons against which the lien was valid despite the warehouse operator's non-compliance with this section.

(14) A warehouse operator may satisfy its lien from the proceeds of a sale made pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods or other person rightfully claiming an interest in the goods or the proceeds of sale.

(15) The rights provided by this section shall be in addition to all other rights permissible by law to a creditor against a debtor.

(16) Where a lien is on goods stored by a merchant in the course of its business, the lien may also be enforced in accordance with subsection (1) or (2).

(17) A warehouse operator shall be liable for damages caused by failure to comply with the requirements for sale under this section and, in case of wilful violation, shall be liable for conversion.

Effect of
irregularities
in issue of a
warehouse
receipt

22. The obligations imposed by this Act on an issuer of a warehouse receipt apply to a warehouse receipt, even if—

(a) the document does not comply with the requirements of this Act or of any other statute, rule, or regulation regarding its issuance, form, or content;

(b) the issuer of the receipt violated laws regulating the conduct of its business;

(c) the goods covered by the receipt were owned by the warehouse operator when the document was issued; or

(d) the person issuing the document is not a warehouse operator but the document purports to be a warehouse receipt.

Obligations of
a warehouse
operator to
deliver goods

23.—(1) A bailee shall deliver goods to a person entitled under a warehouse receipt, if the person complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following—

(a) delivery of the goods to a person whose entitlement was rightful against the claimant;

(b) there is damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(d) release, satisfaction, or any other personal defence against the claimant; or

(e) any other lawful excuse.

(2) A person claiming goods covered by a warehouse receipt shall satisfy the bailee's lien, if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless a person claiming the goods is a person against which the warehouse receipt does not confer a right under section 29,—

(a) the person claiming under a warehouse receipt shall surrender possession or control of any outstanding negotiable warehouse receipt covering the goods to the bailee for cancellation or indication of partial delivery; and

(b) the bailee shall cancel the warehouse receipt or conspicuously indicate, in the document, the partial delivery or the bailee shall be liable to any person to which the document is duly negotiated.

24. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a warehouse receipt or pursuant to this Act shall not be liable for the goods, even if—

No liability
for good faith
delivery
pursuant to
warehouse
receipt

(a) the person from which the bailee received the goods did not have authority to procure the warehouse receipt or to dispose of the goods; or

(b) the person to which the bailee delivered the goods did not have authority to receive the goods.

PART II—NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

25.—(1) If the original terms of a warehouse receipt run to the order of a named person, the document may be negotiated by the endorsement of and delivery to the named person.

Form of
negotiation
and
requirements
for due
negotiation

(2) After the named person's endorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(3) If the document's original terms run to bearer, it may be negotiated by delivery alone.

(4) If the document's original terms run to the order of a named person and it is delivered to that person, the effect shall be the same as if the document had been negotiated.

(5) Negotiation of the document after it has been endorsed to a named person shall require endorsement by the named person and delivery.

(6) A document shall be duly negotiated if it is negotiated in the manner stated in this section, to a holder that purchases it in good faith, without notice of any defence against, or claim to it on the part of any person, and for value, unless it is established that the negotiation was not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

Negotiation
of an
electronic
warehouse
receipt

26.—(1) If the original terms of an electronic warehouse receipt run to the order of a named person or to bearer, the electronic warehouse receipt may be negotiated by surrender of control of the electronic warehouse receipt to another person.

(2) The named person in a warehouse receipt shall not be required to make an endorsement in the negotiation of the electronic warehouse receipt.

(3) If the electronic warehouse receipt's original terms run to the order of a named person and the named person has control of the electronic warehouse receipt, the effect shall be the same as if the electronic warehouse receipt had been negotiated.

(4) An electronic warehouse receipt shall be duly negotiated, if it is negotiated in the manner stated in this section, to a holder that purchases it in good faith, without notice of any defence against or claim to it on the part of any person, and for value, unless it is established that the negotiation was not done in the regular course of business or financing or involves taking control of the electronic warehouse receipt in settlement or payment of a monetary obligation.

Effect of
endorsement
of a non-
negotiable
warehouse
receipt

27. Endorsement of a non-negotiable warehouse receipt shall neither make it negotiable nor add to the transferee's rights.

28.—(1) Subject to sections 18 and 29, a holder to which a negotiable warehouse receipt has been duly negotiated shall acquire—

Rights
acquired by
due
negotiation

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defence or claim by the issuer except those arising under the terms of the document or under this Act, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to section 30, title and rights acquired by due negotiation shall not be defeated by any surrender of the goods by the bailee and shall not be impaired, even if—

(a) the due negotiation or any prior due negotiation constituted a breach of duty;

(b) any person has been deprived of possession of a negotiable printed document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(c) a previous sale or other transfer of the goods or document or any interest therein including any security interest has been made to a third person.

29.—(1) A warehouse receipt or delivery order shall confer no right in goods against a person that, before issuance of the document, had a legal interest or a perfected security interest in the goods and that did not—

Warehouse
receipt
defeated in
certain cases

(a) deliver or entrust the goods or any warehouse receipt or delivery order covering the goods to a bailor or the bailor's nominee with—

(i) actual or apparent authority to ship, store, or sell;

(ii) power to obtain delivery under section 23; or

(iii) power of disposition under any law; or

(b) acquiesce in the procurement by the bailor or its nominee of any warehouse receipt or delivery order.

(2) Title to goods based on an unaccepted delivery order shall be subject to the rights of any person to which a negotiable warehouse receipt covering the goods has been duly negotiated.

(3) The title under subsection (2) may be defeated under section 31 to the same extent as the rights of the issuer or a transferee from the issuer.

Rights acquired
in absence of
due negotiation

30.—(1) A transferee of a warehouse receipt, whether negotiable or non-negotiable, to which the document has been delivered but not duly negotiated, shall acquire the title and rights that a transferor had or had actual authority to transfer.

Transfer of
warehouse
receipts

31.—(1) In the case of a transfer of a non-negotiable warehouse receipt, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated—

(a) by a buyer from the transferor in ordinary course of business, if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(b) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(c) as against the bailee, by good faith dealings of the bailee with the transferor.

(2) A transferee of a negotiable printed warehouse receipt shall have a specifically enforceable right to have a transferor supply any necessary endorsement for the transfer of a warehouse receipt but the transfer shall become a negotiation only as at the time the endorsement is supplied.

Endorser not
guarantor for
other parties

32. An endorsement of a printed warehouse receipt issued by a bailee shall not make the endorser liable for any default by the bailee or previous endorsers.

Warranties on
negotiation or
delivery of
warehouse
receipt

33. If a person negotiates or delivers a warehouse receipt for value, otherwise than as a mere intermediary under section 30, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that—

(a) the document is genuine;

(b) the transferor has a legal right to negotiate, transfer or assign;

(c) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(d) the negotiation or delivery is rightful and fully effective

with respect to the title to the document and the goods it represents.

34. A collecting bank or other intermediary known to be entrusted with warehouse receipts on behalf of another or with collection of a bill of exchange or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or negotiable instrument to be collected.

Warranties of collecting bank as to warehouse receipt

PART II—PERFECTION AND PRIORITY OF SECURITY INTERESTS IN WAREHOUSE RECEIPTS AND GOODS COVERED BY WAREHOUSE RECEIPTS

35. Except as otherwise expressly provided in this Part, the priorities, rights and remedies of secured parties and debtors in respect of collateral in warehouse receipts shall be determined in accordance with the Personal Property Security Act, 2013.

Perfection of and priority of security interests in warehouse receipts and goods
Act No. 8 of 2013

36.—(1) A security interest in a negotiable printed warehouse receipt and the goods covered thereby may be perfected either by registration or by taking possession of the warehouse receipt.

Perfection of security interest in negotiable paper warehouse receipt

(2) While goods are in the possession of an issuer of a warehouse receipt, a security interest perfected in the warehouse receipt is also perfected in the goods.

(3) A security interest perfected in a negotiable warehouse receipt during the time the goods are in possession of the issuer shall have priority over a security interest that is perfected in the goods by another method during that time.

37.—(1) Where goods are in the possession of the issuer of a paper warehouse receipt in non-negotiable form, a security interest in the goods may be perfected by—

Perfection of and priority of security interests in goods covered by non-negotiable printed warehouse receipts

(a) the issuance of the warehouse receipt in the name of a secured party;

(b) written notification to the issuer that the goods are pledged to the secured party; or

(c) registration of the security interest in the goods by the secured party.

(2) The priority of the security interest in the goods covered by a non-negotiable paper warehouse receipt shall be determined in accordance with section 20 of the Personal Property Security Act, 2013.

Act No. 8 of 2013

Perfection of
and priority of
security
interests in
electronic
warehouse
receipt
Act No. 8 of
2013

38.—(1) A security interest in an electronic warehouse receipt and the goods covered thereby may be perfected either by registration pursuant to the Personal Property Security Act, 2013 or by taking control of the warehouse receipt.

(2) A security interest in an electronic warehouse receipt and goods perfected by control of the receipt during the time the goods are in possession of an issuer shall have priority over a security interest that is perfected by registration during that time.

Priority rights
of purchasers

39.—(1) A purchaser of a negotiable warehouse receipt shall have priority over a perfected security interest in a negotiable warehouse receipt, if the purchaser—

(a) gave value;

(b) acquired the negotiable warehouse receipt without actual knowledge that the transaction was in breach of the security agreement to which the security interest relates; and

(c) took possession or control of the negotiable warehouse receipt.

(2) A purchaser, other than a secured party, of fungible goods sold and delivered by a warehouse operator that is in the business of buying and selling such goods, in addition to taking free of any claims, under warehouse receipts under section 19 and 21, shall take the goods free of any security interest unless the purchaser has actual knowledge that the sale constituted a breach of a security agreement under which the security interest was created.

Act No. 8 of
2013

(3) Registration of a warehouse receipt under the Personal Property Security Act, 2013 shall not constitute notice to or knowledge of a purchaser of a claim or terms of an existing security agreement for purposes of section 41.

Act No. 8 of
2013

(4) Nothing in this Part or in the Personal Property Security Act, 2013 shall limit the rights of the holder of a warehouse receipt which has been acquired by due negotiation as provided in section 25.

PART II—MISCELLANEOUS PROVISIONS

Lost, stolen
or destroyed
documents

40.—(1) If a warehouse receipt is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee shall, without liability to any person, comply with the order.

(2) If the document in subsection (1) was negotiable, a court may not order delivery of the goods or issuance of a substitute document

without the posting of security by the claimant, unless the court finds that any person that may suffer loss as a result of non-surrender of possession or control of the document is adequately protected against the loss.

(3) If the document in subsection (1) was non-negotiable, the court may require security.

(4) The court may also order payment of the bailee's reasonable costs and legal fees in any action under this subsection.

(5) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable warehouse receipt shall be liable to any person injured thereby.

(6) If the delivery is not in good faith, the bailee shall be liable for conversion.

(7) Delivery in good faith shall not be conversion, if the claimant posts security with the bailee in an amount that at least doubles the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

41.—(1) Unless a warehouse receipt was originally issued upon delivery of goods by a person that did not have power to dispose of them, a lien shall not attach on the goods by virtue of any judicial process related to the goods in the possession of a bailee for which a negotiable warehouse receipt is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined.

Judicial
process
against goods
covered by
negotiable
warehouse
receipt

(2) The bailee in subsection (1), may not be compelled to deliver the goods pursuant to a judicial process until possession or control of the document is surrendered to the bailee or to the court.

(3) A purchaser of the document for value without notice of the judicial process shall take free of the lien imposed by the judicial process.

42.—(1) If more than one person claims title to, or possession of goods covered by a warehouse receipt, the bailee shall not deliver the goods until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader.

Conflicting
claims

(2) The bailee may assert an interpleader either in defending an action for non-delivery of the goods or by original action.

43. This Act shall not affect the status of a warehouse receipt that otherwise is within the definition of a warehouse receipt under this Act.

Savings

Regulations **44.** The Minister may make regulations for the implementation of the provisions of this Act.

Passed in Parliament this first day of December, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament