

CHAPTER 18:25
WAREHOUSE RECEIPT ACT
ARRANGEMENT OF SECTIONS

Act 13/2007, SI 172/2009

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SCHEDULE

Agricultural Commodities.

AN ACT to provide for the establishment and registration of warehouses associated with the issuing of warehouse receipts and the licensing of warehousepersons; to provide for the storage of agricultural commodities in registered warehouses; to provide, for the setting up of a system of inspection, grading and weighing of such agricultural commodities; to provide for a negotiable warehouse collateral receipt system; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement : 14th December, 2007.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Warehouse Receipt Act [*Chapter 18:25*].

2 Interpretation

In this Act—

“agricultural commodity” means any agricultural commodity specified in the Schedule;

“depositor” means a person who deposits an agricultural commodity in a warehouse;

“holder” means a person who is in lawful possession of a warehouse receipt issued or endorsed to him or her or to the person’s order;

“licence” means a warehouseperson’s licence issued in terms of Part III;

“Minister” means the Minister of Agriculture or any other Minister to whom the President may from time to time assign the administration of this Act;

“prescribed” means prescribed in terms of the regulations made under section 29;

“receipt” means a warehouse receipt;

“registered”, in relation to a warehouse operator or warehouse, means registered in terms of section 4;

“Registrar” means the Registrar of Warehouses referred to in section 3(1) or any person performing his or her functions in terms of section 3(3);

“warehouse” means any building, structure or protected enclosure in which an agricultural commodity is stored for a third party in return for a storage or processing charge;

“warehouse operator” means a person who operates a registered warehouse;

“warehouse receipt” means an acknowledgement in writing by a warehouseperson of the receipt for storage in a warehouse of an agricultural commodity belonging to a depositor;

“warehouseperson” means a person who is licensed in terms of section 10.

PART II

ADMINISTRATION AND REGISTRATION OF WAREHOUSES

3 Office of Registrar

(1) There shall be a Registrar of Warehouses and such other officers as may be necessary for the proper administration of this Act, whose offices shall be public offices and form part of the Public Service.

(2) The Registrar shall be responsible for—

- (a) registering warehouses and cancelling their registration; and
- (b) inspecting registered warehouses at least once in every calendar year; and
- (c) licensing warehousepersons; and
- (d) issuing to warehousepersons books of warehouse receipts; and

(e) performing such other functions as are conferred or imposed upon him or her in terms of this Act or any other enactment.

(3) Subject to the directions of the Registrar, the other officers referred to in subsection (1) shall perform such of the Registrar's functions as the Registrar may assign to them.

(4) The Registrar shall have power to delegate any of his or her powers to any officer other than the power of delegation.

4 Registration of warehouse operators

(1) No person shall carry on the business of operating any warehouse for the storage of any agricultural commodity in respect of which warehouse receipts may be issued, unless such person is registered in terms of this section.

(2) No person other than a company or other body corporate may apply to be registered as a warehouse operator.

(3) An application for the registration of a warehouse operator shall be made to the Registrar in the prescribed form and manner and shall be accompanied by—

- (a) a certified copy of the applicant's memorandum of association or other constitution together with its articles of association or other rules for the conduct of its business; and
- (b) details of the qualifications and experience of the warehouseperson who shall be responsible for the management of each warehouse; and
- (c) details of the applicant's authorised and paid up share capital or a statement of the applicant's financial capacity to operate a warehouse or both, if the Registrar so requires; and
- (d) a plan and specifications of each warehouse to be operated by the applicant; and
- (e) in the case of an existing warehouse, a current insurance policy in terms of which the warehouse and its contents are insured against fire, storm-damage, theft and other similar perils; and
- (f) the prescribed fee; and
- (g) such other information and documents as may be prescribed or as the Registrar may reasonably require.

(4) If on consideration of an application made in terms of subsection (3) the Registrar is satisfied that—

- (a) the applicant has sufficient authorised and paid up share capital or has the financial capacity to carry on the business of operating any warehouse; and
- (b) every person who is the applicant's warehouseperson is, as far as can be reasonably ascertained, a fit and proper person to hold that office; and
- (c) the applicant is likely to conduct its business in a prudent manner; and
- (d) the documents and information submitted with the application do not disclose that undesirable methods of conducting business are being or are likely to be adopted by the applicant; and
- (e) the applicant complies with such other requirements as may be prescribed; and
- (f) the warehouse, following an inspection, complies with subsection (6); and
- (g) generally, the applicant will comply with such of the provisions of this Act as are applicable to it;

the Registrar shall within fifteen days of receiving the application register the applicant as a warehouse operator.

(5) If on consideration of an application made in terms of subsection (3) the Registrar—

- (a) is not satisfied as to any matter referred to in subsection (4); or
- (b) considers that it would not be in the public interest to register the applicant;

the Registrar shall refuse to register the applicant concerned

Provided that—

- (i) before refusing to register an applicant the Registrar shall notify the applicant in writing within ten days of receiving the application, that he or she proposes to refuse the application, giving his or her reasons for doing so and shall afford the applicant an adequate opportunity to make representations on the matter;
- (ii) within ten days after deciding to refuse to register an applicant the Registrar shall notify the applicant in writing of his or her decision and of the reasons for it.

(6) For the purposes of subsection (4)(f), every warehouse building referred to in the application for registration in terms of subsection (3) shall—

- (a) be structurally sound and secure; and
- (b) have doors which are fitted with suitable appliances for affixing locks; and
- (c) have windows secured with iron bars or bolts and clinched inside; and
- (d) meet reasonable standards relating to ventilation, lighting, cleanliness, waterproofing and safety; and
- (e) have suitable facilities therein for the grading, classifying, processing or storage, as the case may be, of an agricultural commodity.

5 Issuance of registration certificates

(1) Upon registering a warehouse operator in terms of section 4, the Registrar shall issue the applicant a registration certificate which shall be in the prescribed form.

(2) The registration certificate of a warehouse operator may be issued subject to such terms and conditions as may be prescribed or as the Registrar may reasonably determine.

6 Register of warehouse operators and warehouses

(1) The Registrar shall maintain a register of warehouse operators and warehouses.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the office of the Registrar on payment of the prescribed fee.

7 Annual fee payable in respect of registered warehouses

(1) A warehouse operator shall pay to the Registrar in respect of each registered warehouse an annual fee of the prescribed amount.

(2) The annual fee referred to in subsection (1) shall be paid by such date and in such manner as may be prescribed.

8 Amendment of registration certificate

(1) Subject to this section, the Registrar may at any time amend a registration certificate or any term or condition of a registration certificate—

(a) to correct any error in the registration certificate; or

(b) if the warehouse operator requests the amendment; or

(c) if the Registrar considers the amendment necessary to reflect the true nature of the business which the warehouse operator is conducting; or

(d) if for any other reason the Registrar considers the amendment necessary or desirable in the public interest.

(2) Before amending a registration certificate in terms of subsection (1), otherwise than at the request of the warehouse operator, the Registrar shall notify the warehouse operator in writing not less than ten days before the proposed amendment of the nature of the amendment he or she proposes to make and of his or her reasons for wishing to make the amendment, and shall give the warehouse operator an adequate opportunity to make representations on the matter.

(3) If the Registrar refuses to amend a registration certificate at the request of the warehouse operator, he or she shall, within ten days after reaching the decision, notify the warehouse operator in writing of his or her decision and the reasons for it.

9 Cancellation of registration

(1) The Registrar may, by notice in writing to a registered warehouse operator, cancel its registration if he or she has reasonable grounds for believing that—

(a) any warehouse operated by the warehouse operator is no longer managed by a licensed warehouseperson; or

(b) any registered warehouse operated by the warehouse operator no longer complies with the requirements of section 4(6); or

(c) the warehouse operator has failed to comply with this Act or the terms and conditions of its registration.

(2) Before cancelling the registration of a registered warehouse operator the Registrar shall notify the warehouse operator in writing that he or she proposes to cancel its registration, giving his or her reasons for doing so, and shall afford the warehouse operator an adequate opportunity to make representations in the matter or rectify the problem giving rise to the threatened cancellation.

(3) Within ten days after cancelling the registration of a registered warehouse operator the Registrar shall notify the warehouse operator in writing of the cancellation of such registration and the reasons for it.

PART III

LICENSING OF WAREHOUSEPERSONS

10 Licensing of warehousepersons

(1) No person shall be responsible for the management of a warehouse operated by a registered warehouse operator unless such person is the holder of a valid licence issued in terms of this Part.

(2) An application for a licence shall be made to the Registrar in the prescribed form and manner and shall be accompanied by details of the qualifications and experience of the warehouseperson.

(3) An applicant shall be deemed to be a fit and proper person to be licensed as a warehouseperson if in the opinion of the Registrar—

(a) he or she has the prescribed qualifications to be a warehouseperson of the warehouse concerned; or

(b) he or she has a prescribed minimum period of experience in the production, processing or marketing of the agricultural commodity to be stored in the warehouse concerned.

(4) If, on consideration of an application made in terms of subsection (2), the Registrar—

(a) is satisfied that the applicant is a fit and proper person as provided for in subsection (3), he or she shall issue a licence to the applicant;

(b) is not satisfied that the applicant is a fit and proper person as provided for in subsection (3), he or she shall refuse to license the applicant.

(5) a warehouse operator or applicant for registration as a warehouse operator may make application on behalf of any person as a warehouseperson in terms of this Part if that person will be responsible for the management of any warehouse operated by it.

11 Issuance of licences

(1) A licence shall be issued subject to such terms and conditions as may be prescribed or as the Registrar may reasonably determine.

(2) A licence shall be—

(a) in the prescribed form; and

(b) personal to the holder, that is, not transferable to any other person.

12 Register of licences

(1) The Registrar shall maintain a register of licences.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the office of the Registrar upon payment of the prescribed fee.

13 Annual fee payable by warehouse operator on behalf of warehouseperson

(1) Every warehouse operator shall, in respect of each warehouseperson in its employ, pay to the Registrar an annual fee of the prescribed amount.

(2) The annual licence fee referred to in subsection (1) shall be paid by such date and in such manner as may be prescribed.

14 Cancellation of licence

A licence may be cancelled if the Registrar has reasonable grounds for believing that the warehouseperson is no longer a fit and proper person within the meaning of section 10(3).

PART IV

WAREHOUSE RECEIPTS

15 Issuance of warehouse receipts

Warehouse receipts shall only be issued by a warehouseperson in respect of agricultural commodities received by him or her for warehousing or marketing or both.

16 Form and negotiability of warehouse receipts

(1) A warehouse receipt shall be in the prescribed form.

(2) A warehouse receipt shall be negotiable if it clearly states that the agricultural commodity received will be delivered to the depositor or to a specified person on demand.

17 Replacement of warehouse receipts

(1) If a warehouse receipt is lost, stolen or destroyed the depositor or holder at the time shall inform the warehouseperson within twenty-four hours of his or her becoming aware of the loss.

(2) Subject to subsection (3), only a warehouseperson shall issue a replacement warehouse receipt after having taken all reasonable and practicable steps to ascertain the need for such issue and obtained the consent of the depositor to issue the same.

(3) a warehouseperson shall, at the expense of the person requesting a replacement warehouse receipt, advertise in the *Gazette* and in a newspaper circulating in the area, a notice calling on any person with a claim to that receipt to make known his or her claim.

(4) No replacement warehouse receipt may be issued by a warehouseperson until twenty-one days have elapsed from the date of publication of a notice in terms of subsection (3).

(5) In issuing a replacement warehouse receipt, the warehouseperson shall—

(a) cancel his or her copy of the original receipt; and

(b) issue a replacement warehouse receipt endorsed in such a manner as to show that it is a replacement warehouse receipt; and

(c) make an entry in his or her records to the effect that the agricultural commodity described in the replacement warehouse receipt is the same as that specified in the original receipt which he or she has cancelled.

(6) A warehouseperson shall be liable for any proven damages caused by his or her failure to advertise a receipt as being lost, stolen or destroyed in terms of subsection (3) and to endorse the receipt issued in its place as a replacement receipt as provided for in subsection (5)(b)—

(a) to anyone who purchased such lost, stolen or destroyed receipt for value believing it to be the original; and

(b) even if such purchase occurred after delivery of the agricultural commodity by the warehouseperson to the holder of the receipt.

(7) The issue of a replacement receipt shall have the effect of cancelling the original receipt.

18 Alteration of warehouse receipts

(1) Any alteration to a warehouse receipt shall be effected by a warehouseperson or his or her duly authorised agent, and such alteration shall be made on the original and on the copies of the receipt at the offices of the warehouseperson.

(2) Any unauthorised alteration to a warehouse receipt which was not effected by the warehouseperson or his or her duly authorised agent shall render such alteration void and unenforceable against the warehouseperson.

PART V

DUTIES OF WAREHOUSEPERSONS, WAREHOUSE OPERATORS LIEN AND LIABILITY OF WAREHOUSE OPERATORS

19 Duties of warehousepersons

(1) When an agricultural commodity is delivered to a warehouse by a depositor, the warehouseperson shall, subject to—

(a) compliance of that commodity with the prescribed acceptance standards; and

(b) compliance by the depositor with any reasonable acceptance conditions required by the warehouseperson; and

(c) the availability of space at the warehouse or any other relevant factor;

accept such agricultural commodity, weigh it, classify it and, where applicable, process it in the prescribed manner and within the prescribed period.

(2) The warehouseperson shall deliver the agricultural commodity to the person specified in the receipt unless—

(a) the agricultural commodity specified in the receipt—

(i) has already been delivered to some other person pursuant to an endorsement made in terms of section 25; or

(ii) is damaged by water or other cause or has been destroyed; or

(iii) is no longer stored in the warehouse because the depositor has removed it after paying the storage charges due and payable to the warehouse operator; or

(iv) the agricultural commodity has been sold to satisfy a warehouse operator's lien;

or

(b) there is some other valid reason why delivery to the person requesting delivery cannot be effected.

(3) In the event of failure or refusal by the warehouseperson to deliver the agricultural commodity in compliance with a receipt on demand by the person specified in the receipt, the onus shall be on the warehouseperson to establish the existence of a lawful excuse for such failure or refusal.

20 Warehouse operators' lien

(1) Every warehouse operator shall have a lien over the agricultural commodity stored in its warehouse to cover its storage and processing charges.

(2) Any person claiming an agricultural commodity specified in a warehouse receipt shall satisfy the warehouse operator's lien before delivery of the agricultural commodity to him or her.

21 Cancellation Of warehouse receipts

(1) Any person who claims delivery of all agricultural commodities specified in a receipt shall sign that receipt to the warehouseperson for cancellation of the warehouse receipt.

(2) If any person claims delivery of part of the agricultural commodity specified in a receipt, the warehouseperson shall conspicuously endorse such partial delivery on that warehouse receipt.

22 Liability of warehouse operator

(1) In the absence of an agreement to the contrary, a warehouse operator shall be liable—

(a) for all losses where its warehouseperson delivers an agricultural commodity without adequately ensuring that the warehouse receipt is genuine;

(b) subject to subsection (2), in relation to an agricultural commodity stored in its warehouse, for loss or damage caused by its warehouseperson's failure to exercise that degree of care which a reasonably careful warehouseperson would exercise under similar circumstances.

(2) No limitation of liability shall be effective with respect to the warehouse operator's liability for the fraudulent conversion to his or her own use by its warehouseperson of any agricultural commodity or fraudulent dealing in or forgery of any warehouse receipt.

(3) a warehouse operator shall be exempted from liability for any loss—

(a) which could not reasonably have been avoided by the exercise of the care that a reasonable warehouseperson would exercise;

(b) after its warehouseperson in good faith, including the due observance of reasonable commercial standards prevailing in the market for the agricultural commodity concerned, received the agricultural commodity and delivered or otherwise disposed of it in accordance with the terms of the warehouse receipt or in accordance with this Act

23 Manner of storing agricultural commodities

(1) Unless the warehouse receipt otherwise provides, a warehouseperson shall keep separate the agricultural commodity specified in the receipt so as to permit at all times identification and delivery of that agricultural commodity:

Provided that any fungible agricultural commodity may be commingled for the purposes of storage.

(2) Any fungible agricultural commodity which is commingled shall be owned in common by the persons to whom warehouse receipts were issued and the warehouseperson shall be severally liable to each owner for that owner's share.

(3) Where as a result of an over-issue of receipts, any mass of a commingled fungible agricultural commodity is insufficient to satisfy all the lawfully issued receipts, the share of any person entitled to such agricultural commodity shall be prorated with that of every other person so entitled.

24 Termination of storage

(1) A warehouseperson may, in writing, notify a person on whose account an agricultural commodity is held and any other person known to claim an interest in such an agricultural commodity, that—

(a) he or she requires payment of his or her storage charges forthwith and that the agricultural commodity be removed from the warehouse at the termination of the agreed storage period, or where no period is specified, within a period of thirty days after such notification; and

(b) failure to remove such agricultural commodity in terms of paragraph (a) shall entitle the warehouse operator to sell it in terms of its lien referred to, in section 20.

(2) If a warehouse operator in good faith believes that the agricultural commodity is about to deteriorate or decline in value to less than the amount of its lien within the time specified in subsection (1)(a) for notification, it may—

(a) direct the warehouseperson to specify in the notification a shorter time for the removal of the agricultural commodity in those circumstances; or

(b) if the agricultural commodity is not removed after the shorter time notified under paragraph (a), sell it at a public auction held not less than ten days after a single advertisement of such auction in a newspaper circulating in the area.

(3) If in the opinion of the warehouseperson an agricultural commodity which has been deposited in the warehouse is diseased and therefore hazardous to another agricultural commodity in the warehouse, he or she may sell such agricultural commodity without advertisement, provided that reasonable notification is given to all persons with a claim or interest in such agricultural commodity.

(4) If a warehouseperson after reasonable effort is unable to sell the agricultural commodity specified in subsection (3), he or she may dispose of it in any other lawful manner and shall incur no liability by reason of such disposal.

(5) a warehouseperson shall release an agricultural commodity to any person entitled to it in terms of a warehouse receipt upon due demand made at any time prior to the sale or disposal of such agricultural commodity in terms of this section.

(6) A warehouse operator may satisfy its lien from the proceeds of a sale or disposal in terms of this section, but shall hold the balance for delivery on demand by any person to whom it would have been bound to deliver such agricultural commodity.

PART VI

NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

25 Requirements for negotiability

(1) No person may negotiate a warehouse receipt, that is, transfer, pledge or encumber it, unless such transfer, pledge or encumbrance is endorsed on the warehouse receipt and recorded by a warehouseperson.

(2) A negotiable warehouse receipt to the order of a named person shall be negotiated by endorsement and delivery to him or her.

(3) Due negotiation of a warehouse receipt shall occur when it is negotiated in the manner stated in this section to a person in good faith and for value and without notice of any claim to it by a third party.

26 Rights acquired by negotiation

Subject to Section 25, a holder to whom a negotiable warehouse receipt has been negotiated acquires—

- (a) title to the receipt; and
- (b) title to the agricultural commodity, to the extent authorised by the depositor and specified in the receipt; and
- (c) the right to dispose of the agricultural commodity.

27 Rights and obligations of transferors and transferees

(1) An endorsement of a warehouse receipt does not make the endorser liable for any default or negligent act of the warehouseperson or of any previous endorsers.

(2) A transferee of a warehouse receipt shall have an enforceable right to demand any necessary endorsement from a transferor, but the transfer shall only become a negotiation at the time the actual endorsement is made.

(3) Where a person negotiates a warehouse receipt for value, then, unless otherwise agreed, he or she warrants to his or her immediate purchaser that—

- (a) the receipt is genuine; and
- (b) he or she has no knowledge of any fact which would impair its validity or worth; and
- (c) his or her negotiation is lawful with respect to title to the receipt and the agricultural commodity specified therein.

28 Conflicting claims

If more than one person claims title to an agricultural commodity specified in the receipt, the warehouse operator—

- (a) shall be excused from all liabilities arising from its warehouseperson delaying delivery until it has had reasonable time to ascertain the validity of the adverse claims, or has brought an action compelling all claimants to interplead; and
- (b) may compel such interpleader either in defending an action for non-delivery of the agricultural commodity, or in an original action, whichever is appropriate.

PART VII

GENERAL

29 Minister may make regulations

The Minister may make regulations providing for any matter which by this Act is required to be prescribed or which he or she considers necessary or desirable to be prescribed for giving effect to the purposes of this Act.

30 Offences

Any person who—

- (a) operates any warehouse for the storage of any agricultural commodity in respect of which warehouse receipts may be issued, without being registered in terms of section 4; or
- (b) manages a warehouse registered or required to be registered in terms of section 4 as a warehouseperson without being licensed in terms of section 10;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

31 Amendment of Schedule

The Minister may by statutory instrument amend the Schedule by adding, deleting or substituting any item therein.

SCHEDULE (Sections 2 and 31)

[Schedule substituted by s.i 172 of 2009]

AGRICULTURAL COMMODITIES

1. Barley
2. Coffee
3. Ground-nuts
4. Macadania nuts
5. Maize
6. Mhunga
7. Oats
8. Pecan nuts
9. Rapoko
10. Rice
11. Soyabeans
12. Sorghum
13. Sugar beans
14. Sun-flower seed
15. Tea
16. Wheat
17. Cow peas
18. Jugo beans (roundnuts)