a guide to

Warehouse Receipt Financing Reform

Legislative Reform

WORLD BANK GROUP
Trade & Competitiveness

with support from:

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and FIAS partners:
Increasing agricultural financing is a way to boost productivity, improve food security, reduce poverty and increase shared prosperity in communities across the developing world. Despite these many benefits, access to finance in the agribusiness sector is often the lowest in many developing economies. This is due to the high levels of informality as well as, importantly, the inability of banks to secure reliable collateral for lending. Typical sources of collateral in the developed world such as mortgages on farmland and equipment are usually out of reach in many developing countries.

This leaves only post-harvest production as a potential source of collateral. Warehouse Receipt Systems (WRS) have been proven to address the void in agricultural lending by establishing a framework for collateralizing post-harvest production stocks owned by farmers, traders and processors and held in licensed warehouses. Countries that have implemented such programs have seen reduced post-harvest losses, improved stability of market prices, increased food security and a heightened level of formalization of businesses within the sector.

The World Bank Group’s Trade and Competitiveness Global Practice works with client governments to boost trade and investment by creating a better enabling environment for business operations; improve productivity and competitiveness at the national and industry levels; and to strengthen innovation systems, with the collective goal of promoting inclusive and sustainable growth. The Practice has made agribusiness a priority sector, providing advice to clients on policy and regulatory reforms that can facilitate private investment, while maintaining high environmental and social standards.

The legal and regulatory work done by the World Bank Group’s Trade and Competitiveness Global Practice is complemented by the support provided to banks by the IFC and its Global Warehouse Finance Program, the efforts made by the Finance and Markets Global Practice on introducing Secured Transactions regimes, and the assistance given by the Agricultural Global Practice to agricultural production.

This guide aims to be the baseline for WRS legislative reform for developing countries. Comprising five modules, the toolkit is structured on a project cycle, defining the entire legislative reform process step-by-step from the identification phase to implementation phase.

We hope this guide will be a meaningful tool in bringing about dynamic warehouse receipt systems and enhancing the lives of many agricultural producers, traders and processors around the world.

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Purpose of the Guide

The main objective of this *Guide to Warehouse Receipt Financing Reform* is to provide technical advice and guidance to reformers, project teams supporting reforms, donor institutions, government officials, private stakeholders and other practitioners on the different aspects related to the implementation of the law and regulations governing the operation of warehouses, warehouse licensing and supervision, and the issuance and role of documents of title in emerging market countries. It is highly recommended that government officials rely on experts’ advice to introduce or to reform legislation governing the operation of warehouses, as the information provided in this Guide cannot replace the on-the-ground experience of a warehousing legislation expert.

The content of this Guide walks the reader through the project cycle (identification, diagnostic, solution design, and implementation) on the major elements to be considered when introducing pertinent legislative and regulatory reforms. The recommendations presented in this Guide are based on the World Bank Group’s experience in the warehousing sector, and particularly in the context of agricultural commodities, the contributions of a number of experts in this field, existing literature, reform experience in a number of emerging market countries and the existing best practices in jurisdictions with efficient and generally accepted warehousing systems. This Guide does not cover all aspects of warehouse law reform, which will vary depending on the form and substance of the existing legal system, but it aims at covering at least the minimum and most important elements of such a reform.
Nearly everyone has used instruments that are similar to warehouse receipts. They may have, for instance, left their coat in a coat check on the way into an event and received a claim check from the attendant. They expect that, when returning their claim check, they will receive back the coat they left for safekeeping in the same condition as when they dropped it off.

This is the same basic principle for warehouse receipts. In an agricultural context, owners of agricultural commodities—producers, traders or processors—deliver these goods to a warehouse, receive a receipt from the warehouse operator stating the nature, quantity and quality of the goods deposited and then expect that the goods will be returned to them upon presentation of the receipt.

The main difference is that, with a warehouse receipt scheme backed by appropriate legislation and regulation, the depositor will also be able to sell the receipt and thereby sell the underlying goods or even use the receipt as collateral to secure a loan from a financial institution. In addition to facilitating agricultural credit secured by the warehoused goods, a comprehensive legislative platform and regulation can encourage other financial services such as insurance, exchange-based trading, instruments for price-risk management, and the creation of short-term, commodity-backed financial instruments such as bankers’ acceptances.

Specialized legislation produces clear benefits in terms of access to finance, as it:

- **Increases access to finance** by commodity producers, processors and traders by reducing the risk of lending;
- **Reduces lending transaction costs** in rural areas thus reducing fees and rates; and
- **Provides a better match between collateral and short term borrowing needs**, thus freeing up fixed assets (e.g., land) to pledge for long-term finance needed for productivity investments.

In the agricultural sector, the introduction of a warehouse receipt system can have a transformative effect beyond the provision of finance towards the professionalization of the warehouse industry, as it can:

- **Lower post-harvest losses** because it encourages an alternative to on-farm storage by smallholders where goods are exposed to risks of rain and flood, and infestation by pests and disease;
- **Reduce seasonal price volatility** by providing an alternative to farm gate sales promptly after harvest;
- **Improve production and yield assessment and planning** by encouraging a transition away from the informal sector where data concerning production, yields, quality and prices is less reliable; and
- **Encourage higher quality production**, as moving out of the informal sector also improves market transparency and quality awareness for producers and creates clearer incentives for higher quality.
MODULE 3
Readiness Assessment

For stability and the greatest chances of success, the Warehouse Receipt System (WRS) needs the support of its three main constituencies—three core pillars—to thrive:

- **Potential users**: Producers, traders, processors, and exporters are the main recipients for the WRS. Without their support, the system loses its core reason for existence;
- **Warehouse operators**: The warehouse operators’ reliability is the keystone for the trust each stakeholder is going to place in the WRS; and
- **Financial institutions**: Short of the financial institutions’ backing and the possibility to pledge warehouse receipts to receive financing, the WRS’s scope is dramatically reduced.

In short, WRS reform makes sense only if certain conditions are met to ensure the participation of each of the system’s three main constituencies. Rushing the introduction of the system can have detrimental consequences, as losing the participants’ trust by implementing a WRS too soon is very hard to reverse.

The Module gives an overview of how to carry out the readiness assessment and presents the main subjects and the key issues for each subject that a readiness assessment needs to cover:

1. **Commodities** likely to be used:
2. **Potential users** of the system;
3. **Warehousing industry**;
4. **Financial institutions**; and
5. **Institutional capacity**.

Regarding commodities, the assessment will explore the storability of agricultural goods produced in the country, the volumes marketed, the price patterns and suitability for delayed marketing, the existence and market acceptability of grades and standards, market price transparency and the likelihood of market intervention.

The assessment will also try to determine whether the main public and private sector stakeholders—users, warehouse operators, banks, insurance companies, public entities—would strongly support a WRS. The respective interests for users of a WRS tend to be:

- **Producers**: Lower post-harvest losses thanks to improved access to professional warehousing, access to insurance coverage, higher price from delayed marketing;
- **Traders**: Increased access to trading and financing opportunities;
- **Processors**: Lower financing cost of working capital; and
- **For all actors**: Improvement of product quality and market transparency.

Regarding the warehousing industry, the assessment will focus on storage capacities, their proximity to users and associated estimated transportation costs, the quality of facilities, their accessibility to third parties, the quality and reputation of storage practices, and collateral management and field warehousing practices.

Regarding financial institutions, the assessment will gauge the status of agri-financing, the proximity of branches to production areas, the current practices and openness to collateral based financing and the interest of banks in the WRS concept.

Regarding institutional capacity, the following questions will have to be answered. Are there competent institutions to implement and regulate an efficient and reliable WRS? Is the judiciary equipped to deal rapidly and effectively with priority and enforcement issues under a modern WRS? Is there an authority or body of government officials which is capable of enforcing rights of holders of warehouse receipts?

Finally, deciding whether to introduce a WRS is not a hard science. For each of the subjects noted above, the goal of the readiness assessment is not to determine if the country reviewed meets optimal conditions for a WRS—it is seldom the case for all criteria—but rather to measure the gaps between the current state of affairs and the basic requirements of the system required to implement a viable WRS. As such, the decision to carry out the introduction of a WRS will depend on whether the gaps identified in the readiness assessment can be bridged during the few years of implementation following the passage of the WRS law. The
Module provides an overview of the main issues and expected challenges that, if identified during the readiness assessment, should be signs that it is probably not advisable to engage in WRS reform in the very near future for the country or region considered.

**MODULE 4**

**Warehouse Receipt Financing Reform Process**

The process of developing a Warehouse Receipt System (WRS) is almost as critical to the system’s success as the content of the law and regulations supporting it. The WRS legislative reform process’s steps can be summarized as follows:

![Figure 1: Simplified WRS Reform Process](image)

On the front end of the process, a readiness assessment should be performed as a first step, as it is critical to ensure that there is a valid case for launching a warehouse receipt financing reform process in the country considered. The following steps are dedicated to gathering the Program Management Team (PMT) and launching the reform building process. One of the key elements of these steps revolves around facilitating stakeholder engagement. Indeed, the reform process should be seen as an opportunity to secure stakeholders’ buy in. Eventually the stakeholders involved in the reform process are likely to become the WRS’s best advocates. Conversely, past experience shows that, in some of the countries where the reform process did not involve stakeholder participation, the WRS’s adoption by its expected users proved difficult and slow.

As a result, managing a successful WRS reform process will depend on the PMT’s ability to manage risks along the way and to mobilize all private and public stakeholders around the WRS reform, walk them through the legal and operational concepts of a WRS and eventually have them design and build a WRS to which they want to commit.

**MODULE 5**

**Legislative Reform Content**

Stakeholders will be interested in taking part to the Warehouse Receipt System (WRS) only if they deem that the balance between the risks and rewards expected from the WRS appears favorable, i.e., if risks can be managed and a profit can be made.

Depositors considering delivering goods to the custody of the warehouse operator, banks considering advancing credit against a warehouse receipt, purchasers considering the opportunity of buying the stored goods will all try to assess two main risks:
• Risk of non-performance by the warehouse operator, i.e., risk of failure to deliver the goods upon presentation of the warehouse receipt; and

• Risk of invalidity of the warehouse receipt to transfer good title to the goods, free of claims of third parties, i.e., risk of not acquiring real and enforceable ownership of the goods when acquiring the warehouse receipt.

By reducing the risks perceived by WRS stakeholders, the legislation can lead to creating market acceptance of warehouse receipts, and can encourage banks, in particular, to provide credit under reasonable costs/rates to the borrowers. A flawed legal system can, by contrast, create obstacles to broad acceptance and utilization by the community.

When implementing a full-fledged WRS reform, the overall objective should be to endow the system with security that encourages market participants to freely trade and finance the underlying warehoused goods. A well designed legal system will try to contain the risks mentioned above, notably by:

• Defining the relative priorities among different claimants, thereby alleviating the risk of warehouse receipt invalidity; and

• Regulating the enforcement mechanism of these rights, including the protection against the non-performance of the warehouse operator.

In order to facilitate reliable storage, finance and trading of agricultural goods, the goal of the legislative reform should be to draft, adopt and implement modern and appropriate laws and regulations:

• Governing the rights and obligations of warehouse operators and the holders of warehouse receipts;

• Providing for the licensing and supervision of warehouses storing agricultural goods;

• Providing for registration of warehouse documents; and

• Conferring on warehouse documents the status of documents of title to goods so that the documents and the underlying goods can easily be transferred and traded.

Considering the above, the Module provides an overview of how to define the scope of the legislative reform’s content, taking into account the importance of the existing legal tradition, as well as discusses the key features of a WRS Law and its implementing regulations, and presents an annotated model law.
Guiding Principles of Warehouse Receipt Financing Reform

To be successful, the introduction of a warehouse receipt system (WRS) needs to be built upon the following key elements:

PRINCIPLE 1
Warehouse receipt financing reform makes sense only if certain conditions are met—from having an adequate agricultural context that suits warehouse financing to securing strong public and private sector support for the WRS—and rushing the introduction of the system can have detrimental consequences; readiness assessments need to be thoroughly conducted (Module 3—Readiness Assessment).

PRINCIPLE 2
Regulation seeks to establish trade instruments and to define the ways to use them; as such, certain specific features of warehouse receipts need to be included in the WRS through the legislative reform process (Module 5—Legislative Reform Content).

PRINCIPLE 3
Regulation by itself cannot ensure that a WRS would function properly; trust in the system is key; stakeholder engagement will be a determining factor in ensuring success (Module 4—The Warehouse Receipt Financing Reform Process).

- The system’s clients—producers, traders, processors—will most probably need to be educated on the system’s principles, procedures and virtues to raise their interest and prime the pump.
- Warehouse operators have a key part to play. Their role will need to be well defined and made appealing for the private sector, as their performance is critical to make the system secure and inspire trust in all participants.
- Banks are a constituency whose understanding of and support to the system is essential to the system’s viability and impact on developing access to credit. Their involvement, role and adequate procedures will have to be secured through the reform process.

PRINCIPLE 4
Establishing a proper legal and regulatory framework is just a first step. Many other critical challenges have to be overcome during the implementation of a WRS, from the system’s supervision to issues pertaining to warehousing standards, or insurance coverage, among others.
# Module 2

## Introduction to Warehouse Receipt Systems

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Introduction

This module provides a brief overview of warehouse receipts and the system within which they operate, introducing concepts that will be explained in more detail in the modules that follow, in particular in Module 5.

Basic Principles

At some stage, nearly everyone has used instruments that are similar to warehouse receipts. They may have left their coat in a coat check on the way into an event, parked their car in a commercial garage, or left luggage in private storage at an airport or train station while traveling. In each case, they would have received a claim check from the attendant. In all of these transactions people expect to hand in their claim checks and receive back the items they left for safekeeping in the same condition as when they were dropped off.

This is the same basic principle for warehouse receipts. Although there are a number of caveats to these examples, that will be explored later in this Guide, the main difference is that people depositing goods under a warehouse receipt scheme most often intend to use the receipt to secure a loan from a bank or other financial institution. In other words, a warehouse receipt can be used as collateral for a loan. And it is the legal underpinnings of the receipt and how it is linked to the goods in storage that creates this opportunity for the owners of stored goods. In this way warehouse receipts are considered a variant of secured transactions.¹

Warehouse receipts have a long history, with the first recorded form as grain receipts in Mesopotamia around 2,400 BC. For their part, Athens, Egypt, Persia, Jerusalem, and Rome all traded some form of financed warehoused goods. Later on, negotiable silver warehouse receipts became the first form of paper currency in England. While this Guide will focus on agricultural warehouse receipts, the rules and benefits apply to almost any storable goods.

Notwithstanding their long customary history and position within the broader area of secured transactions, warehouse receipts have evolved over time into a specialized area of law. In most jurisdictions this specialization has occurred to better adapt their use to the complexities of the agricultural sector. That being said, the founding principle across all goods and all jurisdictions is the recognition of warehouse receipts as a document of title.

¹ For further information on the general area of secured transactions please refer to the IFC’s (International Finance Company) “Secured Transactions Systems and Collateral Registries Toolkit.” http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/industries/financial+markets/publications/toolkits/secured+transactions+systems+collateral+registries+toolkit
Warehouse Receipts as Documents of Title

There is a range of legal concepts surrounding a document of title but at its core it evolved from a simple principle: it is almost always easier to transport and transfer a piece of paper versus transporting or transferring a physical good, whether that good is a kilogram of gold or a thousand tons of grain. In this sense, documents of title, which include warehouse receipts, bills of lading and dock receipts, are vital for the proper functioning of commerce, which would grind to a standstill if physical goods had to be presented each time a transaction took place.

Understandably, parties accepting a warehouse receipt require solid legal protections. In countries following the English common law tradition, chiefly the United Kingdom, members of the British Commonwealth, and the United States and United States territories and its protectorates, the source of relevant legislation will be:

- The laws dealing specifically with bailments and the issuance of warehouse receipts and the licensing of warehouses;
- The laws governing negotiable instruments or bills of exchange (regarding the rights of transferees);
- The laws concerning the sale of goods (regarding the status of warehouse receipts as title documents and the passage of title to goods covered by warehouse receipts); and
- The laws relating to the pledges of goods and priorities.

Perhaps the most elaborate and comprehensive statutory treatment of warehouse receipts and related jurisprudence can be found in the annotated edition of the Uniform Warehouse Receipts Act which was first promulgated in the United States in 1922. This was later replaced by Article 7 of the Uniform Commercial Code.

In Civil Law jurisdictions the laws relating to pledges of goods will normally be found in the Code Civil and the laws relating to the status and priority of warehouse receipts will normally be found in the Code du Commerce. In general, the laws and practices have similar practical effect in the common and civil law traditions.

In addition to any legislation governing the rights and obligations of parties in the country in which the warehouse is located, the rights and obligations are further defined by the terms and conditions of the written storage agreement and wording of the storage documents.
Advantages of Warehousing Systems Backed by Appropriate Legislation and Regulation

In many countries, warehousing systems and access to third party storage remain informal and are governed by general laws and further defined by the contractual agreements between depositors and warehouse operators. However, such arrangements are often considered insufficient by local bankers, depositors and traders to protect their interests. For instance, lack of standards for the issuance and use of receipts, slow court systems, complicated legal systems, lack of alternative dispute resolution systems, and limits on liability are just a few of the many factors that can make informal systems untenable.

With appropriate legislation and regulation the warehouse receipt can become an accepted instrument for the deposit, pledge, purchase and sale of the underlying commodities between parties located far from the warehouse. In a very real way it increases the range of goods that can be used to secure a loan, moving farmers beyond the traditional and often controversial default collateral: land. In addition to facilitating agricultural credit secured by the warehoused goods, a comprehensive legislative platform and regulation can encourage other financial services such as insurance, exchange-based trading, instruments for price-risk management, and the creation of short-term, commodity-backed financial instruments such as bankers’ acceptances.

Specialized legislation produces clear benefits in terms of access to finance:

- Increases access to finance by commodity producers, processors and traders by reducing the risk of lending;
- Reduces lending transaction costs (e.g., high information gathering costs and high supervision costs) in rural areas thus reducing fees and rates; and
- Provides a better match between collateral and short-term borrowing needs, thus freeing up fixed assets (land, etc.) to pledge for long-term finance needed for productivity investments.

In the agricultural sector, the introduction of Warehouse Receipt legislation can have a transformative effect beyond the provision of finance towards the professionalization of the warehouse industry:

- **Lowers post-harvest losses** because it encourages an alternative to on-farm storage by smallholders where goods are exposed to risks of rain and flood, and infestation by pests and disease. Moreover, commercial warehouses tend to have higher rates of fumigation and drying facilities to retard deterioration and degradation during storage. Substantial post-harvest losses not only reduce the economic benefits to farmers but substantially impact local food security. Adequate warehousing infrastructure substantially reduces exposure to such post-harvest losses;
- **Reduces seasonal price volatility** by providing an alternative to farm gate sales promptly after harvest. This is typically at the top of the supply curve and bottom of the historic price curve. If farmers have the option to safely store, rather than to sell, their production, supply will be reduced and seasonal price fluctuations will be based on storage and financing costs rather than drastic and wasteful oversupply;
- **Improves production and yield assessment and planning** by encouraging a move out of the informal sector where data concerning production, yields, quality and prices are less reliable. Where warehousing infrastructure is available, production and quality is reliably recorded and production marketing typically takes place at the warehouse level rather than the farm gate. Planning and communications with farmers (extension services, input marketing, financial services, etc.) using the warehouse system can be greatly enhanced; and
- **Encourages higher quality production**, as moving out of the informal sector also improves market transparency and quality awareness for
producers and creates clearer incentives for higher quality. In the informal sector, the link between higher quality and higher prices can be tenuous. In a WRS however, not only is quality assessed more systematically through the use of standards and grading at the warehouse level to ensure that the same quality and quantities are observed before and after storage, but also price premiums tend to reward higher quality in a more reliable way.

More generally, an effective legal framework for warehousing and documents of title is a crucial component of a healthy agricultural sector and business climate. Effective secured transaction laws and appropriate working capital finance facilities enable farmers, processors and traders to expand their business activities using bank finance rather than through the slow process of capital formation through accumulation of retained earnings. Agricultural businesses in emerging markets are severely underleveraged which is one of the chief reasons for their very slow rate of growth and development and overly conservative business plans in comparison to SMEs (small and medium enterprises) in OECD (Organization for Economic Co-operation and Development) countries. A significant and growing trend among multi-lateral institutions and reform-minded governments has been to recognize the need for law reform initiatives in this sector and to foster the use of goods in storage as collateral for loans. These programs support the development of a well-functioning warehousing legislation framework through a delivery model that focuses on harmonizing/revising laws, building warehouse receipt registries, and building the capacity of users to reap the benefits of these systems.
Understanding the Parties to a Warehouse Receipt System

**Depositors**

Depositors are usually farmers, processors and/or traders looking to store their goods in a safe place. They may be storing goods in order to reach critical volume levels for purchase contracts or simply trying to avoid the low prices that tend to predominate around harvest time. Given their cash flow needs, for instance, to buy seeds for the next season or purchase additional inventory, storing goods without using them as collateral substantially limits their future options.

**Warehouse Operators**

Warehouse operators provide storage services for a fee. Upon accepting agricultural goods, for instance, they generally weigh, inspect and grade them, and may even fumigate them to protect against pests before placing them in a storage facility that protects against the elements, diseases, infestation and theft. The amounts, grades, and qualities are generally recorded on the warehouse receipt and a storage contract is drawn up with the depositor. There are four main types of warehouse operations:

- **Self-managed warehousing:** The farmer or trader retains control of the goods in their own facilities. A good example of this type of warehousing operation could be a large commercial farming operation that routinely stores harvested produce in its own warehouses prior to transporting to buyers. While warehouse receipts can be issued over these goods, they generally require an explicit declaration that the warehouse operator owns the goods. For obvious reasons this is the least secure type of receipt for the purposes of collateral as banks are unlikely to trust owner/operators.

- **Field warehousing:** Here a field warehousing operator takes control of a warehouse or storage facility owned by the depositor. This is usually accompanied by the posting of signs giving public notice of the possession by the field warehouse company, the installation of locks and seals, management by bonded staff, and the issuance of legally valid warehouse documents. The field warehouse operator then becomes responsible for the control and storage of the goods in the warehouse.

- **Public warehousing:** In this case, a third party operates an independent warehouse which they either own or lease and offers storage services for a fee.

- **Collateral management agreements:** A collateral management company (CMC) operates a warehouse (either its own, the depositor’s or a third party’s) and enters into a tripartite agreement with the depositor/debtor and a creditor through which the CMC commits to securing for the creditor the depositor’s goods stocked in the warehouse and used as collateral for a loan from the creditor to the depositor/debtor.
To be effective the warehouse will have to be located within an area with adequate transport facilities available to depositors—farmers, traders or processors—at reasonable cost. Depositors and buyers using the warehouse must have confidence that the weight and grade of the commodities have been accurately recorded by the warehouse operator. Scales must be seen to be calibrated periodically and warehouse staff must be seen to be competent to accurately assess the fair average quality of the commodities under established grades. Normally, agricultural products delivered by depositors will be commingled and blended with similar commodities delivered by others to yield a standard grade meeting average specifications of moisture, color, size, and other criteria established by the market. Often goods must be dried, rotated, fumigated, packaged, and labeled for entry into the market. The warehouse operator must be competent, and have the equipment necessary to perform whichever of these functions is appropriate for the relevant market.

Insurance Providers
Warehoused goods will be exposed to various casualty risks and depositors, and especially smallholder farms, will not have insurance to cover losses. The warehouse operator will have access to such insurance and in doing so provides a convenient means to distribute this necessary financial service up-country.

Banks and Financial Companies
Warehouse receipts tend to open up the possibility of new business and an expanded role in the agricultural sector for financial institutions. In countries that mandate minimum lending levels to the sector, warehouse receipts can provide a platform to comply with these rules. Nonetheless, bankers have a range of issues to consider and often have to upgrade internal procedures to effectively manage the new collateral and lending needs.3

Regulator
As with banks, the relationship between the warehouse and depositor, and between the warehouse and the buyer of the warehoused goods, is based on trust and the expectation of utmost good faith on the part of the warehouse operator. Where the warehouse operator is an established name in the market, this may be enough to inspire the necessary level of confidence on the part of depositors and buyers. Generally, however, local authorities will create an agency in charge of regulating the WRS and of conducting tasks, whose scope will vary depending on the country and the situation. Typical duties of the regulator may include:

- Supervising the activity of agricultural warehouses through licensing regulations;
- Conducting periodic on-site inspections;

3 A relevant toolkit for Bankers has already been prepared by the IFC: “Warehouse Finance and Warehouse Receipt Systems, A Guide for Financial Institutions in Emerging Economies.”
- Serving as the first step in dispute resolution between parties to the warehouse receipt transaction; and, in some cases
- Facilitating the creation of an indemnity fund.

One form of insurance that is typically unavailable in emerging markets is a legal liability and fidelity bond covering the obligations of the warehouse operator to the depositor. In recognition of this gap, many countries with active agricultural warehousing have required the warehouses to subscribe to an indemnity fund designed to cover losses resulting from fraud or unauthorized release of the goods by the warehouse operator.

The regulator will have to secure funding to carry out the tasks mentioned above. Recruiting and training in-house inspectors or contracting outside experts to inspect licensed warehouses will indeed come at a cost. Options for generating income could include, among other things, charging fees to deliver agreements to licensed warehouses and/or fees on the goods transiting through the WRS.
How Warehouse Receipt Systems Work in Practice

The following overview graphic describes how a WRS works and how the actors discussed in the above section interact with one another. This will be broken down in more detail throughout the remainder of this Module to better explain each step. Armed with this information reformers can have a better appreciation of the end result they are seeking to achieve.

Figure 2: Simplified WRS Process (if the warehouse receipt is pledged)

Figure 3: Simplified WRS Process (without pledging the warehouse receipt)
The following will describe in more detail how each step of Figure 3 above is carried out and the underlying concepts.

**Getting Ready for the WRS**

Prior to operationalizing the WRS, each of the system’s main constituents will have to prepare for integration into the system by performing a few upstream tasks.

If the WRS design calls for the introduction of appropriate legislation and regulation, the WRS’s legal and regulatory framework will have to be put in place and a WRS regulating body will have to be created. The WRS regulator will then have to establish standards for granting agreements to in-house or external inspectors, to warehouse operators and potentially to professionals in charge of weighing and grading the goods entering licensed warehouses. If the choice is made to have a central registry for paper and/or electronic warehouse receipts managed by the regulator, the logistical and digital architecture of such a registry will have to be set up to enable and supervise the issuance of warehouse receipts by the different warehouse operators.

The warehouse operator needs to establish operations, apply for and be granted a license by the regulator after an inspection of its facilities. To receive the agreement, the warehouse operator will have to demonstrate the ability to, among other things:

- Accurately weigh, grade and safely store goods brought by depositors; and
- Provide adequate insurance coverage for the warehousing business.

If a central registry for warehouse receipts has been created by the regulator (see above), the warehouse operator will receive tangible warehouse receipts, most likely on secured paper, from the regulator and will also have to connect to the regulator’s electronic warehouse receipt platform (if needed).

Banks and financial institutions participating in the WRS will need to develop and implement internal rules throughout their branches’ networks to accept warehouse receipts as collateral for a loan and manage associated risks and procedures. More detail on pledging warehouse receipts will be given in the description of Steps 3 & 4 below.

**STEP 1**

**The Depositor Brings the Commodity to the Warehouse for Safekeeping**

The WRS process starts when a depositor decides to bring goods to be stored within a licensed warehouse. In the case of producers, after having harvested their crop, they may decide to turn down the low farm gate price they are offered and instead have their goods transported to the warehouse for safekeeping. Traders, on their end, may opt for the WRS to increase their volume of business, using the financing obtained from stored goods to acquire more goods, while processors may consider that the WRS is a useful resource to lower their working capital costs (e.g., financing their stocks of raw materials and/or finished products).
The Warehouse Operator Issues a Warehouse Receipt

Upon reception of the goods from the depositor, the warehouse operator tests, grades and weighs the commodity deposited and then gives the depositor a receipt showing this information. The depositor and warehouse operator also sign a storage contract that specifies the fees for storage and duties owed by the warehouse operator.

It should be noted that the commodity will have to meet certain minimum quantity and quality criteria to be accepted by the warehouse operator.

Box 1—Costs Borne by Depositors

Three types of costs need to be considered by depositors when participating in a WRS:

- Transportation and logistical costs associated with bringing the goods to the warehouse;
- Storage fees charged by the warehouse operator for handling and storing services (including any grading, drying, cleaning, fumigating fees that may be required to store the goods properly);
- Financing costs (i.e., interest and fees) charged by the bank for financing the goods in storage in case the warehouse receipt is used as collateral for a loan.

Those costs should be offset by the benefits of:

- Lower potential post-harvest losses due to inadequate local or self-storage;
- Delayed sale during oversupply market conditions and possible price increases after harvest season;
- Opportunity to have products graded as part of the storage process;
- Availability of insurance coverage; and,
- Access to credit opportunities, using the warehouse receipt as collateral.

Moreover, in many cases, storage fees charged as part of a WRS are regulated and standardized, and designed to be affordable for users. Similarly, financing costs tend to be lower than those charged for other financial products thanks to the system's standardized approach and the lower risks offered to banks by the WRS.
A GUIDE TO WAREHOUSE RECEIPT FINANCING REFORM

Box 2—Common Features of Warehouse Receipts

Once the goods enter a warehouse and once a warehouse receipt is issued for them, certain common features—and certain rights for the warehouse receipt holder—are derived from the warehouse receipt:

- **Ownership of the goods stored**—Unless the warehouse receipt is sold to someone else, the depositor—just as the person who parks their car in the garage or stores their luggage in a staffed locker room or hands an overcoat to a coat check—remains the legal owner of the goods. As explained in a prior section, warehouse receipts are a document of title representing the goods stored. The owner of a valid warehouse receipt is therefore the rightful owner of the goods stored. Even in the case of the warehouse operator’s bankruptcy, the warehouse receipt owner remains the owner of the goods, as those goods are never considered to form part of the warehouse operators’ assets;

- **Transfer of ownership**—A warehouse receipt is a document whose ownership can be transferred and transferring the ownership of the receipt (i.e., selling the receipt) corresponds to transferring the ownership of the underlying goods stored in the warehouse. The modalities of the transfer or sale, by negotiation or assignment, will depend on whether the warehouse receipt is negotiable or non-negotiable and will be explored in further detail when describing Steps 5 & 6;

- **Pledging the receipt and the underlying goods stored**—As highlighted previously, a warehouse receipt can also be used as collateral for a loan, as pledging the receipt is equivalent to pledging the underlying goods. The modalities of pledging warehouse receipts will be explored in further detail when describing Steps 3 & 4;

- **Rights against third parties**—Except in case of theft, the rights of the warehouse receipt owner over the goods deposited normally take precedence over claims of subsequent good faith purchasers or pledgees;

- **Rights against the warehouse operator**—The warehouse operator is liable to take proper care of the goods when handling and storing them and only the warehouse receipt owner can decide when the goods are released from the warehouse. The rights and duties of the warehouse operator will be detailed further when describing Steps 7 & 8.

**STEPS 3 & 4**

The Depositor Pledges the Warehouse Receipt and Receives a Loan from the Bank

As shown in Figure 3, if a buyer offers a purchase price that is deemed sufficient by the depositor, he or she can choose to sell the goods straight away without first pledging the receipt (Steps 3 & 4 of Figure 3). Box 4 provides more detail on the modalities of such a sale.

Should the depositor decide to wait, he or she can reach out to a financial institution partnering with the WRS to obtain a loan using the warehouse receipt as collateral. Box 3 explains this process in more detail.

It should be noted that other cases may occur beyond those presented by Figure 2 and Figure 3. In practice, any subsequent owner of the
warehouse receipt—and not only the original depositor of the goods—could use the receipt as collateral for a loan while they still possess the receipt. Taking the example shown in Figure 3, after having received ownership of the warehouse receipt from the depositor at the end of Step 4, the buyer could legitimately keep the goods in storage, go to a bank and pledge the rightfully acquired receipt (i.e., in such case, the process would resemble Step 3 of Figure 2).

Box 3—Pledging the Warehouse Receipt

In order for a bank to grant a loan using a warehouse receipt and the underlying stored goods as collateral, it must evaluate risks related to both the depositor (borrower) AND the warehouse operator. In many cases, banks limit their warehouse receipt lending to a small number of pre-qualified warehouses with which they have a close relationship and regularly monitor.

In practice, the borrower completes a loan application process and relinquishes the warehouse receipt to the bank. The loan is usually provided against only a percentage of the current market value of the commodity in storage. This might range from 50 to 80% and is valued this way to take into consideration potential price fluctuations of the commodity and the likely costs involved in recovering and then liquidating the commodity, should the borrower fail to repay the loan.

Not all banks are willing to lend against warehouse receipts. Those that do apply three elements of collateralized credit:

- **Verification:** The bank must be able to verify that the goods exist and belong to the borrower;
- **Valuation:** The bank must be able to determine the amount the borrower is likely to receive when the goods are sold;
- **Control:** The bank must be able to ensure that the goods or their proceeds will be used to repay the loan.

Warehouse receipt systems fulfill these three criteria. The goods are deposited in a warehouse that is authorized under local law to issue warehouse receipts that show the quantity, quality and location of the goods. The law will provide that the holder of the warehouse receipt (now the bank) is the legal owner of the goods, has the sole right to authorize the warehouse to release the goods, and has the right to sell the goods by delivery of the warehouse receipt to the warehouse operator or a buyer.4

**STEPS 5 & 6**

**The Depositor Sells the Goods to a Buyer**

While the goods are in storage and the warehouse receipt is pledged against a loan, the depositor remains in charge of finding a buyer. Once the depositor and a potential buyer agree on a sale price, the buyer will have to pay the agreed price directly to the bank. The bank will then transfer the warehouse receipt to the buyer, reimburse the loan extended to the depositor, pay the outstanding storage fees to the warehouse operator and finally give the remainder of the sale proceeds, if any, to the depositor.

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4 For further information on how financial institutions can manage warehouse receipt financing, please refer to the IFC’s “Warehouse Finance and Warehouse Receipt Systems, A Guide for Financial Institutions in Emerging Economies.”
The case presented here is only one of the many configurations that are possible for Steps 5 & 6 depending on the way the loan agreement between the depositor and the bank and/or the sale agreement between the depositor and the buyer have been set up. For instance, it might be the case that the depositor or the buyer remains in charge of paying the outstanding storage fees—instead of the bank in the example shown in Figure 2—which would lower the sale price charged to the buyer.

Finally, it should be noted that WRS are sometimes connected to commodity exchanges that facilitate the sale and purchase of the receipt and the underlying goods.

Box 4—Selling the Goods, Selling the Warehouse Receipt

As was explained above, the warehouse receipt represents the goods in storage and it can be transferred to another person as a direct sale or given to a bank as security for a loan.

The modalities of transfer of a warehouse receipt will depend on whether the receipt is negotiable or non-negotiable:

- **Negotiable warehouse receipts**—Such receipts can be issued “to the bearer,” i.e., to anyone in physical possession of the receipt, in which case the ownership of the goods is transferred simply by delivery of the warehouse receipt. To sell the receipt and the underlying goods, one needs only to physically give the receipt to the buyer. Negotiable warehouse receipts can also be issued to the order of a person XYZ. In that case the “negotiation” or sale of the goods is complete when the receipt is delivered AND the buyer (i.e., the subsequent holder of the warehouse receipt) endorses the receipt.

- **Non-negotiable warehouse receipts**—Such receipts are issued to a specific individual, “person XYZ.” Their transfer requires three steps:
  i. An agreement between the receipt holder and the buyer;
  ii. Sending a written notice to the warehouse operator; and
  iii. A confirmation from the warehouse operator that the goods are now held in the warehouse on behalf of the buyer.

**STEPS 7 & 8**

**The Warehouse Operator Delivers the Goods Stored to the Buyer upon Presentation of the Warehouse Receipt**

When presented with the warehouse receipt, the warehouse operator must deliver the goods described by the warehouse receipt, following the specifications indicated on it. Warehouse operators are however allowed to refuse to deliver the goods until they are paid for storage and handling fees. The rights and duties of the warehouse operators are further detailed in **Box 5**.
The warehouse operator plays a key role in a WRS. As discussed previously, depositors need to trust that the goods they bring to the warehouse will be kept safely and returned to them intact when need be. Similarly, banks will agree to extend loans against warehouse receipts only if they are convinced of the warehouse receipt’s trustworthiness and therefore of the warehouse operator’s reliability. As a result, the role of the warehouse operator—his or her duties and rights—needs to be clearly defined for the WRS to flourish.

The Duties of the Warehouse Operator

The duties of warehouse operators licensed as part of a WRS are generally specified in the law. They are deemed responsible for the following:

- **Due care**—The warehouse operator is expected to take due care of the goods when handling and storing them. Due care implies that the operator will protect the goods from a set of risks ranging from theft, to weather hazards, to infestation by pests and disease; and

- **Delivery**—Ultimately the warehouse operator must be able to deliver the goods according to the specifications indicated on the warehouse receipt and the storage contract in terms of quantity and quality upon presentation of the receipt.

It should be noted that the warehouse receipt and/or the storage contract may indicate an accepted range of variations in quantity and quality due to the handling and storage of the goods (e.g., cleaning and drying the goods will result in a weight loss due to the removal of impurities and a decrease in humidity as well as in an improvement in quality).

Appropriate legislation and robust enforcement mechanisms will ensure that the above-mentioned duties are duly fulfilled. As seen previously, with such safeguards, the goods will for instance remain the property of the warehouse receipt owner and be available to him or her even in case of the warehouse operator’s bankruptcy.

The Rights of the Warehouse Operator

In exchange for the above-mentioned duties, the warehouse operator has certain rights.

- **Unpaid fees**—If there are outstanding storage and handling fees at the time the warehouse receipt owner comes to retrieve the goods, the warehouse operator can keep the commodity until payment is received or sell a portion of the commodity to cover costs as is likely specified in the storage contract;

- **Delay**—If no one comes pick up the goods within the agreed upon timeframe, the warehouse operator is authorized to sell the goods to cover his or her fees. In case of unpaid fees or delay, the warehouse operator has to return the excess profit to the warehouse receipt owner, when he or she comes to claim the goods, if the proceeds of the sale exceed what was owed to the warehouse operator; and

- **Loan default**—When a depositor defaults on a loan where the commodity in storage was used as collateral, the warehouse operator can claim the fees directly from the bank when it comes to reclaim the stored goods. In this case the warehouse operator is considered to hold a lien over the stored goods. This legal term essentially means that the warehouse operator has a legal claim over the goods to secure payment of the outstanding fees.
# MODULE 3

Readiness Assessment

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Introduction

As will be explained in Module 4, the first step of the process followed by reformers should be to conduct a readiness assessment to determine whether the country or region considered is a viable candidate for a Warehouse Receipt System (WRS) reform initiative.

Figure 4: Simplified WRS Reform Process

For stability and the greatest chances of success, the WRS needs the support of its three main constituencies—three core pillars—to thrive:

- **Potential users**: Producers, traders, processors, and exporters are the main recipients for the WRS. Without their support, the system loses its core reason for existence;
- **Warehouse operators**: The warehouse operators’ reliability is the keystone for the trust each stakeholder is going to place in the WRS; and
- **Financial institutions**: Short of the financial institutions’ backing and the possibility to pledge warehouse receipts to receive financing, the WRS’s scope is dramatically reduced.

In short, WRS reform makes sense only if certain conditions are met to ensure the participation of each of the system’s three main constituencies. Rushing the introduction of the system can have detrimental consequences, as losing the participants’ trust by implementing a WRS too soon is very hard to reverse.

The Module gives an overview of how to carry out the readiness assessment and presents the main subjects and the key issues for each subject that a readiness assessment needs to cover:

1. **Commodities** likely to be used
2. **Potential users** of the system
3. **Warehousing industry**
4. **Financial institutions**
5. **Government support and institutional capacity**
Readiness Assessment Process

The overall responsibility of conducting the readiness assessment should fall on the Project Leader (PL) of the WRS reform. The PL’s broader role and responsibilities in the overall WRS reform process are described in more detail in Module 4.

Depending on the PL’s profile and knowledge of agribusiness and WRS-related issues, he or she will rely more or less intensely on the technical inputs and support of WRS and agribusiness experts. The readiness assessment can be completed in approximately three months by performing the following tasks:

Figure 5: Readiness Assessment Process

1. Conduct desk review and experts interviews
2. Interview stakeholders
3. Finalize readiness assessment
4. Decide to proceed or not with the WRS reform

Person in Charge
(with technical assistance from agribusiness and WRS experts)

- Analysis of the:
  - Commodities likely to be used;
  - Warehousing industry; and
  - Financial institutions

Project Leader

- Analysis of government capacity and stakeholders’ understanding, support and readiness for WRS reform
- Update of desk research analysis

Government

- Readiness assessment report
- Presentation of findings to the government
- Go/No go

The paragraphs below describe the four steps above in more detail:

1. Conduct desk review and experts interviews:

The process should start with a thorough literature review and interviews with agribusiness experts to have a preliminary sense of:

- Commodities likely to be used (i.e., the market dynamics for the main agricultural commodities produced and/or traded in the country or region);
- The status of the warehousing industry; and
- The status of financial institutions (especially regarding agri-financing and commodity-backed financing).

The above analyses are meant to provide a realistic understanding of the feasibility and timeliness of a potential WRS reform. The conclusion reached at the end of this step could actually be to abandon or postpone the effort of introducing warehouse receipts.

This first step is also essential to prepare the stakeholder interviews performed subsequently, as it helps the Project Leader and his team of experts to
identify the main value chains upon which the WRS could focus.

2. Interview stakeholders:

It is important to complement the research effort produced in the previous step with interviews of stakeholders from the public and private sectors, particularly along each of the most promising value chains. These interviews will not only help acquire new information to refine the conclusions reached from the desk research, but they will also shed a light on the stakeholders’ perspective on a potential WRS in the country. From these interviews the Project Leader will be able to better assess whether the stakeholders would welcome the WRS and if the country would be capable of supporting it.

The following list provides a sample of possible stakeholders that could provide valuable information for the readiness assessment:

Public Sector:

• Ministry of Finance/Economy
• Ministry of Justice
• Central Bank/Superintendency of Banks
• Ministry of Commerce
• Ministry of Agriculture
• Ministry of Industry
• Members of the Judiciary
• Bailiffs or execution agencies
• Public notaries/Existing public registries
• Legislators, members of economic parliamentary commissions

Private Sector:

• Farmers, cooperatives and farmers associations
• Processors and processors associations (foreign and local, large and small)
• Traders and traders associations (foreign and local, large and small)
• Commodity exchanges
• Warehouse operators (local and international) and collateral managers
• Banks (foreign and local)
• Bankers association
• Insurance companies (property, liability, bonds and financial guarantees)
• Agricultural equipment leasing companies

Other:

• Agricultural input vendors (pesticides, herbicides, fertilizers, seeds, small equipment, labor and transport services)
• Law firms
• Bar associations/law societies
• Business associations and chambers of commerce

3. Finalize readiness assessment:

Based on the analyses performed in the first two steps, conclusions can be drawn regarding the potential for a new WRS based on each of the five main topics to be explored in a readiness assessment:

• Commodities likely to be used
• Potential users of the system
• Warehousing industry
• Financial institutions
• Institutional capacity

It is important to note in finalizing the readiness assessment that the Project Leader should focus on the overall potential for WRS and the gaps that will have to be bridged to implement a WRS in the country. Balancing all the information gathered for each of the five subjects above, the readiness assessment report should either advocate for or warn against engaging in a WRS reform. Reaching a conclusion while considering conflicting information can be difficult. For instance, there may be commodities or warehouse availability but little interest from the banking system. For this reason, the last section of this module, Conclusion and Decision Making, helps reform teams navigate through vague conclusions at the end of the readiness assessment phase.

4. Decide to proceed or not with the WRS reform:

Even if the readiness assessment is positive in its conclusions, the process should be consultative. Therefore, a presentation of the findings and recommendations given by the Project Leader should be made to stakeholders so that the Government can then make an informed decision on whether to launch a formal WRS reform initiative.
ISSUE 1
Commodities Likely to Be Used

The WRS’s three main constituencies—potential users of the WRS, warehouse operators and financial institutions—need to support the system fully for it to be viable and eventually successful. The agricultural commodities likely to be used play a key role in ensuring such support. They need to present certain characteristics in order to meet some of the conditions that will be of crucial importance for each constituency, namely:

• **Potential users** will turn to a WRS if they deem it profitable. The economic equation of such a system can be positive for them only if it involves goods that can be safely stored for a reasonably low fee and for a relatively long time, and whose price pattern presents an interest for delayed marketing;

• **Warehouse operators** will join the WRS and/or invest in quality warehousing infrastructure if they see the system as a profitable venture as well, i.e., if the income they collect from warehousing fees is high enough to generate a return on their infrastructure investments. This notably requires sufficient volumes to be marketed and to be likely to transit through the WRS;

• **Financial institutions** will extend financing against warehouse receipts only if they consider that the WRS is trustworthy and that risk can be measured accurately. Multiple factors will come into play to allay those concerns, including reliable grades and standards for commodities traded and a somewhat predictable pricing mechanism, which is difficult to guarantee in case of sudden market changes triggered by market intervention (e.g., introduction of export bans or price controls).

In this context, the readiness assessment will explore the following aspects of the commodities likely to be used in the WRS:

• **Storability**

• **Volumes marketed**

• **Price patterns and suitability for delayed marketing**

• **Grades and standards**

• **Price transparency**

• **Market intervention**

Storability

When determining the most promising commodities that are likely to be used in a potential WRS, one of the main features to explore pertains to the commodities’ storability. WRS users will go through the trouble of arranging transportation to deposit goods into a warehouse, only if those goods can be stored with limited risk for a certain amount of time and at a reasonable cost. From a risk management perspective, financial institutions will similarly prefer commodities with long storage life in order to maximize the chances that stored goods will be sold and loans repaid before the goods’ quality deteriorates.

Examples of commodities with such ease of storage and relatively long shelf life could be cashew, coffee, cocoa, maize or rice among many others. Conversely, fruits and vegetables tend to be difficult to manage in the context of a WRS because of their shorter shelf life and need for more elaborate—temperature controlled—storage.

Volumes Marketed

For producers, traders, exporters or processors to use a WRS, they need easy access to proper warehousing infrastructure. For warehouse operators to invest in such infrastructure, they need a steady flow of business from their warehousing activity. The readiness assessment will therefore attempt to determine not only the volumes produced for each of the main commodities in a country or a region but also the:

• **Geographical concentration of production**, as highly concentrated production areas are easier to serve from a storage standpoint. Indeed, a smaller catchment
area requires fewer warehouses and ensures that more volumes will transit through each warehouse. This in turn diminishes the need for storage infrastructure investments and raises the probability that each warehouse can be run as a profitable business; and

- **Volumes actually traded rather than consumed on the farm.** Subsistence farming—growing crops to feed one’s family—is not the best foundation for a WRS, as the crops tend to stay on the farm. Producers are interested in marketing only the relatively small surplus quantities not needed to meet their family’s needs. They will probably consider it too costly to use the WRS for either the goods destined for their own consumption or for the potential surplus quantities they may want to market. On the other hand, commercial farming—growing crops with the purpose of selling them for a profit—will be more suitable for a WRS. Commercial farmers will be more willing to pay for storage fees to protect their production from post-harvest losses and to delay sales during oversupply market conditions after harvest.

Determining an exact threshold in terms of quantities of commodities marketed for a WRS to be sustainable is difficult. Calculations need to be made to assess whether the WRS would allow both the warehouse operators’ businesses and the regulator’s operations to be economically viable:

- **From the perspective of warehouse operators,** the volume of business and associated profit generated through the WRS need to be sufficient to cover the main costs (e.g., fixed costs like insurance cost or rental fees if the warehouse is leased and variable costs like staff or electricity costs) and ensure a return on the investments made (e.g., investments to build, buy or refurbish the warehouse and investments in grading, weighing and other equipment);

- **From the perspective of the WRS regulatory body,** the income derived from the WRS (e.g., licensing and inspection fees paid by licensed warehouse operators or fees on warehouse receipts) will have to cover the cost of organizing the WRS (e.g., office overhead and personnel costs for the WRS regulatory body’s management and inspectors, creation and maintenance costs for the warehouse receipt registry).

### Price Patterns and Suitability for Delayed Marketing

Price fluctuations are another variable that could prompt potential users to welcome the introduction of a WRS. In many places worldwide, farmers tend to sell their production all at the same time, right after harvest, usually because of a lack of practical storage options and/or because of the need to collect the sale’s proceeds to invest it in the next harvest or to meet other pressing financial imperatives (e.g., to pay loans used to finance inputs or production costs). The ensuing surge of market supply—while market demand remains constant—tends to depress prices. In such cases, the possibility to delay marketing by storing goods in a proper fashion, while receiving financing against the stored goods/warehouse receipt, makes the WRS very attractive for producers or traders. The readiness assessment should analyze price patterns over several seasons and market dynamics for each of the main commodities considered viable for storage in a WRS.

It should be noted that some of the potential users like local processors or importing traders will be less interested in delayed marketing and more receptive to the opportunity offered by a WRS to finance long-term storage:

- **Importing traders** tend to purchase large quantities that are drawn down over time. This creates a need for long-term storage financing between the moment the goods arrive and the timeframe within which they are sold. To address this need, importing traders tend to resort to Collateral Management Agreements (CMA) and using warehouse receipt financing can be a flexible and affordable complement or substitute to a CMA.

- **Local processors** face similar issues. In some countries and for some crops, they have to acquire raw material for the whole year of operation over a short period of time (sometimes over only a couple of months, right after harvest). In such cases, a WRS can be a useful tool to lower the cost of working capital by allowing processors to receive financing against the raw material stored. The same holds true for financing the cost of storing their finished products.

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5 “Warrantage” systems—systems similar to the WRS, usually backed by micro-finance institutions—have proven quite successful, notably in the Sahel, in helping improve access to storage at the village level for subsistence farmers.
Grades and Standards

As seen in Module 2, it is critical for WRS users and warehouse operators to be able to clearly identify the obligations of the warehouse operator regarding the storage and delivery of the goods deposited.

In that respect, both parties will have to rely on commonly accepted standards and tools to assess the quantity and quality of the commodities not only at the time of storage, but also at the time of delivery. Indeed, warehouse receipts usually indicate an accepted range of variations in quantity and quality due to the handling and storage of the goods (e.g., cleaning and drying the goods result in a weight loss due to the removal of impurities and a decrease in humidity as well as in an improvement in quality). The need for commonly accepted standards and tools to measure quality and quantity of the goods stored is all the more pressing that third parties (e.g., subsequent buyers of the warehouse receipt or courts arbitrating WRS disputes) will also have to trust and refer to the same tools when considering the warehouse receipt.

The readiness assessment will determine whether stakeholders in the agribusiness sector are using established grades and standards (see example of grades and standards in Table 1) and whether the warehousing industry is used to measuring and grading the quality of goods deposited in its warehouses.

Table 1: Example of Grading Parameters for White Maize and Yellow Maize from Maize Contracts from the Ethiopia Commodity Exchange

<table>
<thead>
<tr>
<th>Parameters</th>
<th>Grade 1</th>
<th>Grade 2</th>
<th>Grade 3</th>
<th>Grade 4</th>
<th>Grade 5</th>
<th>LG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Test mass kg/hl, % min.</td>
<td>75.0</td>
<td>72.0</td>
<td>69.0</td>
<td>66.0</td>
<td>63.0</td>
<td>57.0</td>
</tr>
<tr>
<td>Total impurities, max % by weight</td>
<td>4.5</td>
<td>7.0</td>
<td>11.5</td>
<td>15.5</td>
<td>20.0</td>
<td>28.0</td>
</tr>
<tr>
<td>Of which:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Damage, under-developed &amp; broken kernels, max % by weight</td>
<td>3.5</td>
<td>5.5</td>
<td>9.0</td>
<td>12.5</td>
<td>16.0</td>
<td>23.0</td>
</tr>
<tr>
<td>• Foreign matter, max % by weight</td>
<td>0.5</td>
<td>1.0</td>
<td>1.5</td>
<td>2.0</td>
<td>2.5</td>
<td>3.5</td>
</tr>
<tr>
<td>• Other grains, max % by weight</td>
<td>0.5</td>
<td>0.5</td>
<td>1.0</td>
<td>1.0</td>
<td>1.5</td>
<td>1.5</td>
</tr>
<tr>
<td>Contrasting color, max % by weight</td>
<td>1.0</td>
<td>2.0</td>
<td>3.0</td>
<td>4.0</td>
<td>5.0</td>
<td>6.0</td>
</tr>
</tbody>
</table>

Price Transparency

As seen in Module 2, the banks that are willing to lend against warehouse receipts need to ascertain the following when it comes to the goods in storage:

- **Verification**: The bank must be able to verify that the goods exist and belong to the borrower;
- **Valuation**: The bank must be able to determine the amount the borrower is likely to receive when the goods are sold;
- **Control**: The bank must be able to ensure that the goods or their proceeds will be used to repay the loan.

In order to perform the valuation mentioned above and, by extension, to value the loan backed by the warehouse receipt, financial institutions will have to introduce new internal procedures to collect and analyze current and past price trends for the commodities stored.

The readiness assessment will gauge whether such market price transparency exists and if past price trends are available. A helpful companion in this process is the International Finance Corporation's (IFC) "Warehouse Finance and Warehouse Receipt Systems, A Guide for Financial Institutions in Emerging Economies."

Market Intervention

A key complement to price transparency is market continuity. To be willing to participate, banks, and WRS stakeholders in general, need to operate under the assumption that the fundamentals of the market dynamics they observe (i.e., supply, demand and price trends) are going to remain more or less stable in the near future.

For instance, WRS depositors will refrain from taking part if they are unsure they can rely on the price curve rise after harvest and the associated interest in delayed marketing mentioned previously in this section. Similarly, financial institutions will be less likely to extend loans backed by warehouse receipts if they question the value of the collateral and the ability of WRS users to repay their loans.

Therefore, sudden market disruptions that would drastically affect the supply, demand and the price equation of WRS commodities—or the fear that such disruptions are likely to take place—can significantly undermine WRS participation. When such disruptions come from unforeseeable external shocks (e.g., worldwide or regional economic crisis), or internal shocks (e.g., a drought) the effects on WRS can be temporary. However, when disruptions come from market interventions by government or parastatal actors, the effect can be a broader and longer lasting destruction of the stakeholders’ confidence in the WRS. These interventions include the introduction or unannounced lifting of:

- Export bans;
- Tariffs;
- Price controls; or
- Subsidized supply of imported commodities by the Government or donors in furtherance of food security policies.

The likelihood of external and internal shocks is hard to assess. The risk of market intervention is however often linked to the commodities of focus of the WRS and to the tradition of market intervention by government agencies. A WRS focused on staple crops (e.g., rice, maize or others depending on the countries) will face higher risks of sudden changes of market conditions in case of food security incidents. Similarly, some countries’ track records show that they tend to resort to export bans and price controls more often than others.
ISSUE 2
Potential Users of the WRS

The readiness assessment will attempt to determine both the level of understanding and support that potential users of a WRS would be likely to manifest. Potential users tend to be mostly agricultural producers, traders, exporters and processors, and these constituencies are driven by varying incentives and may respond differently to the WRS. This diagnosis stage will be useful to gauge potential resistance from vested interests and to identify stakeholders that could contribute to the work on the legislative reform, should the decision be made to implement one.6

Producers

Some of the key aspects to explore regarding agricultural producers in the context of a WRS are the following:

• Production structure: It is critical to understand how agricultural production is organized, as it will influence greatly the producers’ incentive to participate in the WRS. Are farms small or large? Oriented toward subsistence or commercial farming? Are producers linked to cooperatives? Do they take part in out-grower/contract farming schemes? Do producers express any interest in better access to credit and to inventory management?

• Quality orientation: As seen in the previous section, market transparency is one of the key success factors to inspire trust in the WRS. As a result, producers will have to comply with minimum quality requirements to ensure a transparent marketing system and the diagnostic will need to assess their current focus on quality standards and the gap the industry will have to bridge to meet such minimum quality standards.

• Level of understanding, readiness and likelihood to embrace a WRS: This is essentially the conclusion that the readiness assessment needs to draw for each category of potential users. The goal is to determine if a WRS would be too sophisticated for future users or conversely if it would fill a pressing need already identified by them. In short, in the case of producers, will their appetite for the WRS’s advantages outweigh the efforts they will have to make to take part?

Traders and Exporters

Some of the key aspects to explore regarding traders and exporters in the context of a WRS are the following:

• Current standing in the value chains in which they are involved: Traders and exporters play crucial roles to connect market players together. In theory, the improvement in access to credit that a WRS would provide will allow them to expand their business activities substantially. Conversely, the increased market transparency brought by a WRS could alter their role as market connectors. It will be important to clearly identify the role they play in the market and assess their perception of the market changes a WRS would create.

• Connection to the warehousing infrastructure: In some countries, warehouses close to production areas tend to belong to and be operated by traders and exporters or their affiliates. The readiness assessment will determine how they relate to the warehousing infrastructure. Do they own warehouses? Will they be interested in engaging in third party field warehousing?

• Level of understanding, readiness and likelihood to embrace a WRS: The conclusions reached for the traders and exporters’ appetite for the WRS will be of great importance, as they are a constituency that is likely to perceive the WRS as either a great threat or a great opportunity and whose support will play a key role in the success of the WRS.

6 The reform process is further detailed in Module 4.
Processors

Some of the key aspects to explore regarding processors in the context of a WRS are the following:

- **Current constraints to business development, if any:** In some countries, consistent access to quality raw material is a key constraint for agri-processors. In the case of crops that are available for sale only for a few months of the year (e.g., raw cashew in Cote d’Ivoire), processors need to be able to secure quantities for processing of such crops for the whole year over a very short time window. Financing the yearly stock of raw materials (i.e., most of the company’s working capital) can prove to be very costly and even inaccessible for those processors if they can’t access the financing required from financial institutions. In that respect, a WRS can help lower this cost by easing the burden of financing the company’s working capital.

- **Connection to the warehousing infrastructure:** Similarly to traders and exporters, processors tend to operate their own warehouses. The readiness assessment will determine whether it is the case and, if so, whether they would be interested in engaging in third party field warehousing.

- **Level of understanding, readiness and likelihood to embrace a WRS:** The readiness assessment will focus on understanding the obstacles faced by processors. A WRS can help lift some of the constraints that processors typically need to overcome like access to credit and inventory management. As a result, processors can become vocal proponents of the WRS.

**Table 2: Benefits and Challenges of the WRS for Each Type of Users**

<table>
<thead>
<tr>
<th>Types of WRS Users</th>
<th>Benefits</th>
<th>Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Producers</td>
<td>• Reducing post-harvest losses</td>
<td>• Meeting quantity and quality criteria imposed to participate</td>
</tr>
<tr>
<td></td>
<td>• Increasing trading and financing opportunities</td>
<td>• Offsetting transportation costs, storage and handling fees and financial costs</td>
</tr>
<tr>
<td></td>
<td>• Accessing insurance coverage</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Avoiding forced sale during over-supply market conditions</td>
<td></td>
</tr>
<tr>
<td>Traders</td>
<td>• Increasing business opportunities through better access to credit</td>
<td>• Managing increase in market transparency and the associated increase in competition for commodities</td>
</tr>
<tr>
<td></td>
<td>• Monetizing warehousing space</td>
<td></td>
</tr>
<tr>
<td>Processors</td>
<td>• Improving inventory management and lowering cost of working capital thanks to better access to long-term storage financing</td>
<td>• Managing increase in market transparency and the associated increase in competition for commodities</td>
</tr>
<tr>
<td></td>
<td>• Improving access to better quality raw materials</td>
<td></td>
</tr>
</tbody>
</table>
ISSUE 3
Warehousing Industry

This section of the readiness assessment will describe the state of agricultural warehousing both in terms of infrastructure and in terms of practices in order to measure the gap between the current situation and basic requirements for a well-functioning WRS. WRS reform will very often be paired with providing support to the warehousing industry. The goal of the readiness assessment is to determine whether there is a lack of available warehousing infrastructure outside the country’s largest city and main port areas and the extent to which drastic changes will be needed, as well as how realistic such a transformation would be in the period relevant to the establishment of a new WRS.

The main aspects of the warehousing industry that will have to be explored are the following:

- **Storage capacities:** The readiness assessment will have to compare the quantity of storage space with local agricultural output and compare the location of storage facilities relative to production areas.

- **Transportation needs:** Depositors will require relatively easy and affordable access to warehouses. In that respect, the diagnostic should include an assessment of the average costs of transportation of commodities from production centers to local warehousing facilities and from those warehouses to national or export markets.

- **Usage of storage facilities:** Storage facilities might exist but be barely used. The quality of the infrastructure and the extent of actual utilization of the various storage facilities in the commodity sector should be analyzed.

- **Accessibility of storage facilities to third parties:** Storage facilities may also be owned by a very concentrated number of stakeholders who do not wish to grant access to their warehouses to third parties, even for a fee. The assessment will have to determine whether providing storage services to third parties could be made attractive for them.

- **Quality and reputation of storage practices:** Information on the ease of access and affordability of storage needs to be complemented with assessments of the reliability of storage services. It is critical to assess the appreciation of the market of the trustworthiness of local storage or collateral management companies, as they will be destined to play a key role in inspiring trust in the WRS. The stakeholders’ trust will derive from the following factors:
  - **Commodity grades and standards:** The diagnostic will explore the customary use and specificity of the commodity grades and standards used by warehouse operators and the perception stakeholders have of their practices;
  - **Institutional monitoring of warehousing practices:** It is also important to determine whether the country has the institutional infrastructure to perform warehousing facilities inspections, including inspections of the proper use of commodity grading and standards;
  - **Insurance coverage:** The availability and cost of insurance options should be researched, as a lack of insurance at reasonable cost to cover the liability of warehouse operators or insurance of the warehoused goods against normal casualty risks would deter potential WRS users from participating. Such insurance coverage will be essential to inspire the stakeholders’ confidence in the system.

- **Collateral management agreements and field warehousing practices:** Some of the key legal concepts supporting a WRS can also be found in other systems such as collateral management agreements (CMA) and stock management agreements (SMA). It is therefore of great interest to determine whether such systems are commonly used in the country or region considered and to interview collateral management companies. Gaining a clear understanding of the legal obstacles collateral management companies face in developing their business can be a way to establish a roadmap of the legal instruments that the WRS will have to introduce.

- **Openness to the concept of participating to a WRS from the warehousing industry:** As is the case with other stakeholders of the WRS, the warehousing industry’s support will be a key component of the WRS’s success. The diagnostic phase will have to gauge the level of support that the industry is likely to provide and identify potential participants to the WRS reform process. Collateral management companies should be included in this analysis of the warehousing industry’s appetite for a WRS.
ISSUE 4
Financial Institutions

The support of financial institutions to a WRS will be critical for the system’s viability. Without the backing of financial institutions and therefore the option to pledge warehouse receipts, the scope and interest for potential users would be dramatically reduced. Financial institutions will extend financing against warehouse receipts only if they consider that the WRS is trustworthy and that risk can be measured accurately. The readiness assessment will have to understand the banks’ perception of risk when dealing with movable property as collateral and their ability to manage warehouse receipt financing. It will be important to meet all active players, as foreign owned banks often have approaches to lending that may differ from those of locally owned banks.7

The main aspects of agri-financing and commodity based financing that will have to be explored are the following:

- **Status of agriculture financing:** A WRS can help improve access to credit for WRS users. It is therefore important to determine whether potential future users are currently underserved by financial institutions and whether they are interested in expanding their access to credit. The diagnostic will analyze the volume of financing granted to agriculture over the past few years, its main sources and the types of financing products involved. Moreover, some countries have minimum lending mandates for the agriculture sector and these should also be taken into consideration. Interviews with potential future users and banks along with desk research will help understand the main constraints faced by the agricultural sector in securing financing. Conversely, the diagnostic will attempt to assess whether the banking sector shows an interest in increasing its agriculture financing activities and sees potential in using the WRS context to do so.

- **Proximity of bank branches to production areas:** In some countries, banks tend to confine their branch network to large cities and do not engage in rural financing. Such practices need to be identified as part of the diagnostic, as they greatly diminish, from a practical and economic standpoint, the ability of potential rural users of a WRS to receive financing against warehouse receipts, as it becomes too onerous for them to transact with the banking sector. One way to circumvent the lack of proximity of bank branches to production areas will be to encourage the practice of having some of the warehouse operators participating in the WRS acting as bank agents vetting lending or brokering loans. The expansion of mobile and electronic banking practices might also contribute to overcome such challenges.

- **Current practices and openness to collateral based financing:** The relationship between a WRS and the banking sector hinges partly on the banks’ understanding of, and appetite for, collateral based financing. In a WRS, the warehouse receipt issued against goods stored can then be used as collateral to obtain a loan. The diagnostic will strive to understand how banks would welcome such a mechanism. In doing so, some of the key aspects of the banks’ operations linked to collateral based financing will be analyzed, such as the:
  - Banks’ lending decision-making factors;
  - Types of assets used as collateral;
  - Banks’ views of default enforcement of security interests; and
  - Current practice, if relevant, of financing of commodity collateral held in third-party storage (e.g., in the case of collateral management agreements and stock management agreements).

- **Interest of financial institutions in the WRS idea:** A key conclusion that the readiness assessment needs to reach is whether the banking sector seems likely to support and embrace the WRS. If the banking sector appears conservative and regards loans to farmers and loans secured by agricultural commodities as poor security, it is likely that any impact of a WRS reform on bank lending practices will not be experienced for a long period of time. However, where bankers perceive a WRS as a way to make collateral based financing more secure and are eager to expand their financing to the agricultural sector, it is likely that a WRS will be more easily and favorably adopted. Of course, the level of interest and future buy-in will vary from bank to bank. The important point here is that there is enough financing interest and presence in key markets to lend credibility to the WRS.

ISSUE 5
Government Support and Institutional Capacity

As seen in prior sections of this Module, key stakeholders like potential users of the WRS, the warehousing industry or the banking sector will play decisive roles in ensuring the WRS’s success. The readiness assessment will also have to gauge the country’s institutional capacity and its ability to support a full-functioning WRS.

Level of Support

It is important to assess the overall political environment and government capacity as it is likely to impact support for a WRS reform. This information should be gathered primarily through interviews conducted with officials from institutions such as the central bank, relevant ministries of the government and key members of the legislative branch. It is of particular importance that public sector stakeholders clearly understand what the reform entails and the benefits that the reform could have in the financial and agricultural sectors.

Capacities

In most cases the analysis of institutional capacity will involve three questions: (i) are there competent institutions to implement and regulate (to the extent required by the proposed law) an efficient and reliable WRS; (ii) is the judiciary equipped to deal rapidly and effectively with priority enforcement issues under a modern WRS; and (iii) is there an authority or body of government officials which is capable of enforcing rights of holders of warehouse receipts?

Existing regulatory capacity: The regulatory challenges in managing an effective WRS fall into two broad categories: financial, and technical and certification oversight. The diagnostic should include an assessment of whether the administrative infrastructure can carry out the regulatory responsibilities of technical and certification oversight (i.e., licensing, supervision, inspection, registration, fee collection, grading, sampling and weighing of commodities), and enforcement of sanctions provided under a WRS law and regulations. The perception of stakeholders regarding the risk of graft in the implementation of such an oversight role should be taken into account. Finally, the readiness assessment will determine if grades and standards used in the agribusiness sector are industry-led and enforced or if they are regulated and supervised by a public inspection agency.

The judiciary: While WRS reform does not imply any changes to the judicial system, aspects of the design of a WRS are influenced by the efficiency of the court system and the quality of judges’ decisions. The diagnostic should address the speed at which applications to the courts are handled and enforcement orders are executed. Significant uncertainty or delay in court rulings and in enforcement of orders increases the level of risk in granting credit and reduces the willingness of creditors to rely on security in movables. In that respect, the readiness assessment should explore the acceptance and practice of alternative dispute resolution (ADR) mechanisms in the country.

Enforcement: A key component of a successful WRS is the ability of a creditor extending a loan against the goods covered by a warehouse receipt to dispose of those goods by simple negotiation or transfer of the warehouse receipt. If the country or the region considered is one in which self-help enforcement is not permitted under the existing law, it is important to focus on the enforcement administration to determine whether it is efficient and cost-effective.

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8 Repossession: act or an instance of retaking property. Self-help: attempt to redress a perceived wrong by one’s own action rather than through the normal legal process (Black’s Law Dictionary).
Conclusion and Decision Making

As seen previously in the section Readiness Assessment Process, after having researched the subjects detailed in the sections above through desk research and interviews of experts and stakeholders, the Project Leader in charge of the readiness assessment needs to draw conclusions on the feasibility and timeliness of pursuing the WRS reform process and recommend a course of action to the Government.

Deciding whether to introduce a WRS is not a hard science. For each of the subjects noted above, the goal of the readiness assessment is not to determine if the country reviewed meets optimal conditions for a WRS—it is seldom the case for all criteria—but rather to measure the gaps between the current state of affairs and the basic requirements of the system required to implement a viable WRS. As such, the decision to carry out the introduction of a WRS will depend on whether the gaps identified in the readiness assessment can be bridged during the few years of implementation following the passage of the WRS law.

Table 3 provides an overview of the main issues and expected challenges that, if identified during the readiness assessment, should be signs that it is probably not advisable to engage in WRS reform in the very near future for the country or region considered.
Table 3: Prohibitive Challenges for a WRS to Be Monitored in the Readiness Assessment

<table>
<thead>
<tr>
<th>Topics</th>
<th>Prohibitive Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commodities likely to be used</td>
<td>• No value chain identified that meets the storability and price pattern criteria</td>
</tr>
<tr>
<td></td>
<td>• Very small overall production volumes of commodities likely to be used compared to projections of operation costs for warehouse operators and the regulator</td>
</tr>
<tr>
<td></td>
<td>• High probability of market intervention</td>
</tr>
<tr>
<td>Potential users of the WRS</td>
<td>• Weak support to the WRS concept manifested collectively by producers, traders and processors</td>
</tr>
<tr>
<td></td>
<td>• Sophistication of potential users too low to meet WRS participation criteria in terms of quality and quantity even in the mid-term</td>
</tr>
<tr>
<td>Warehousing industry</td>
<td>• Weak support to the WRS concept manifested by the warehousing industry (i.e., no interest expressed in expanding business using the WRS)</td>
</tr>
<tr>
<td></td>
<td>• Very substantial gap between installed storage capacities and need (in terms of tonnage as well as location and quality of facilities and storage practices)</td>
</tr>
<tr>
<td></td>
<td>• Mistrust of potential users toward the warehousing industry (including collateral management companies)</td>
</tr>
<tr>
<td>Financial institutions</td>
<td>• No support to the WRS concept manifested by the banking sector (i.e., mistrust expressed regarding the possibility of extending loans backed by warehouse receipts)</td>
</tr>
<tr>
<td>Institutional capacity</td>
<td>• Weak support to the WRS concept manifested by the Government and difficulty identifying a potential reform Champion</td>
</tr>
<tr>
<td></td>
<td>• Mistrust of potential users toward the institutional capacity of enforcing the WRS Law and regulations</td>
</tr>
</tbody>
</table>
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Introduction

The process of developing a Warehouse Receipt System (WRS) is almost as critical to the system’s success as the content of the law and regulations supporting it. This Module gives an overview of the suggested steps to follow for a WRS legislative reform and the resources required at each of these suggested steps.

It should be noted that introducing the right legal and regulatory framework is only one of the steps to ensure that the WRS will thrive. Legislative reform should ideally be complemented with efforts to set up the right institutional structure to supervise the WRS, provide support to the warehousing industry, raise stakeholders’ awareness and understanding of the system through information and dissemination programs as well as training, ensure that insurance coverage is available against nonperformance of warehouse operators, and explore solutions to easily trade warehouse receipts.

The WRS legislative reform process’s steps can be summarized as follows:

On the front end of the process and as mentioned in the Guiding Principles of Warehouse Receipt Financing Reform presented in Module 1, a readiness assessment should be performed as a first step, as it is critical to ensure that there is a valid case for launching a warehouse receipt financing reform process in the country considered. Module 3 gives a more focused and detailed description of how to carry out such a readiness assessment.

The following steps are dedicated to gathering the Program Management Team (PMT) and launching the reform building process. One of the key elements of these steps revolves around facilitating stakeholder engagement. The reform process should be seen as an opportunity to secure stakeholders’ buy in, as the stakeholders involved in the reform process are likely to eventually become the WRS’s best advocates. Conversely, past experience shows that, in some of the countries where the reform process did not involve stakeholder participation, the WRS’s adoption by its expected users proved difficult and slow.

As a result, managing a successful WRS reform process will depend on the PMT’s ability to mobilize all private and public stakeholders around the WRS reform, walk them through the legal and operational concepts of a WRS and eventually have them design and build a WRS to which they want to commit.
Program Management Team, Roles and Responsibilities

A WRS legislation reform process will involve a number of contributors, such as Working Group members (see next section) or WRS experts mobilized to provide technical support or stakeholders impacted by the reform process. A Program Management Team (PMT) is needed to drive the reform process, to catalyze everyone’s contributions and to ensure that deadlines are met and outputs delivered. The roles and responsibilities of the PMT’s members could be described as follows:

**Project Leader**

It is advised that the Project Leader be part of the Government. The Project Leader’s role will be to monitor, support and facilitate the WRS reform process. He or she will be responsible for providing operational support to the Working Group. This includes practical and technical assistance needed by the President of the Working Group and other Working Group members to deliver drafts, incorporate stakeholders, and keep the process moving forward to approval. To do so, the Project Leader will have to mobilize a team of WRS experts.

**Reform Champion/President of the Working Group**

It is advised that the WRS reform process be supported by a Champion. Ideally, the Champion will be an influential member of the Government and typically at the level of line Minister or Chief of Staff associated with the Minister’s office. He or she should assume the role of President of the Working Group. The Group will be tasked with writing a first draft of the WRS Law and its implementing regulations with the support of international and local legal experts. The Champion’s responsibilities as President of the Working Group will be to ensure that the Working Group delivers the draft WRS Law and then its regulations, and subsequently to provide any support necessary to see that the law and the regulations are passed by Parliament.

**WRS Experts**

To support the WRS reform project, experts will provide technical guidance on a host of subjects. An international WRS legal expert will be needed to present the best practices worldwide for warehouse receipt financing from a legal standpoint. The international legal expert should also help address any questions on variances or modifications needed from good practice and alternative models for implementation. A local legal expert will be needed to ensure that the Working Group’s WRS law complies and is aligned with the local legal system. Other WRS experts will be needed regarding warehousing best practices and other operational issues.

The figure below summarizes the contributions of PMT members for each step of the reform process:
Figure 8: Roles and Responsibilities of the Program Management Team along the Reform Process

1. Conduct readiness assessment

2 & 3. Identify Champion and create Program Management Team

4 & 5. Identify stakeholder groups and assemble Working Group (WG)

6. Guide the WG through the reform process

7. Ensure the WRS Law and regulations are passed

**Person in Charge**

**Main contributors**

- **Government:**
  - Decide to proceed or not with WRS reform
  - Propose reform champions

- **Champion:**
  - Chair stakeholder workshop(s)
  - Help assemble WG
  - Present WRS Law and regulations to government
  - Help with political and parliamentary process

- **Project Leader:**
  - Manage experts' contributions
  - Present findings to government
  - Organize stakeholder workshop(s)
  - Manage experts' contributions

- **Project Leader:**
  - Address technical queries
  - Facilitate WG work
  - Manage experts' contributions

- **WRS Experts:**
  - Provide technical content for readiness assessment
  - Provide guidance on WG composition
  - Provide legal guidance on WRS law
  - Provide legal guidance on Government and Parliament queries

**Working Group**

- Propose, discuss and decide on adjustments to WRS Law & regs.
- Facilitate WG work
- Manage experts' contributions

- Present WRS Law and regulations to government
- Help assemble WG
- Address WG questions

- Facilitate WG work
- Manage experts' contributions

**WRS Experts:**

- Present WRS to stakeholders
- Provide guidance on WG composition
- Provide legal guidance (model and local WRS law)
- Address WG questions
- Address technical queries
Reform Process and Stakeholder Engagement

A suggested timeline for a WRS legislative reform is presented below.

Figure 9: WRS Reform Process Timeline

<table>
<thead>
<tr>
<th>Timeline</th>
<th>Person in charge</th>
<th>Deliverables</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approximately 3 months</td>
<td>Project Leader</td>
<td>Decision to proceed or not with WRS reform</td>
</tr>
<tr>
<td>Weeks/months preceding reform launch</td>
<td>Program Management Team</td>
<td>Program Management Team as assembled (including experts)</td>
</tr>
<tr>
<td>Project launch over a few weeks</td>
<td>Program Management Team</td>
<td>Working Group of stakeholders identified and mobilized</td>
</tr>
<tr>
<td>Approx. 12 months (6 months for draft law and regs + parliamentary discussions)</td>
<td>Program Management Team</td>
<td>WRS law and regulations in place</td>
</tr>
</tbody>
</table>

The paragraphs below describe the six steps above in more detail:

1. **Conduct readiness assessment:**
   The project leader should be in charge of conducting the readiness assessment. Depending on his or her profile and knowledge of agribusiness and WRS-related issues, he or she will rely more or less intensely on the technical inputs and support of WRS and agribusiness experts. More detail can be found in Module 3.

2. **Identify a Champion within the Government to sponsor and push the reform:**
   The local Champion will be the key driver of the reform process. It is therefore critical to secure the support of a strong local Champion. There is no ideal local Champion when implementing a WRS reform, but there are some basic characteristics to look for in the local Champion, such as strong political influence and familiarity with relevant legislative and administrative procedures, the ability to make decisions and implement them, a good understanding of the agricultural market, a conceptual understanding of warehousing legislation and its potential benefits, and the support of other stakeholders. Typical candidates for the role of Champion for a warehousing legislation project commonly include the Ministry of Agriculture, Ministry of Trade, Ministry of Industry, Ministry of...
3. Create a Program Management Team (PMT): A project leader and a project team are needed to drive the reform process. They will make sure that the main milestones of the project are met and that the project’s timeline is duly followed. It is advised that the project leader be a member of one of the key ministries involved, as one of the main tasks of the PMT will be to manage the process from the Government’s side and to ensure that the Government takes ownership of the reform. He or she should receive and organize support from international and local legal experts as well as other technical and operational resources that should be included in the team.

4. Identify stakeholder groups: Creating a strong stakeholder group is a critical step towards mobilizing support for any legislative reform initiative. Therefore, an important step in the reform process will be to identify the key stakeholders in the early stages, make sure that all stakeholders understand the benefits of an effective WRS legislation, and secure their support for introducing the reform. A stakeholder is an individual, community, or group that has something to gain or lose, whether directly or indirectly, from the outcomes of a reform program or activity. Stakeholders may actively promote reform or instead impede it by fighting for the status quo. In any reform project, identifying and analyzing the needs and concerns of different stakeholders is fundamental to shaping and implementing reform. The challenge is not only to identify appropriate and influential stakeholders but to identify appropriate and influential stakeholders who are committed to drive the reform process forward. This motivation may come from commercial interests or any other reason, but whatever the motivation, a local force driving the reform initiative is indispensable. In a WRS reform process, the stakeholders may include, among others:

- The Ministry of Agriculture;
- The Ministry of Finance/Economy;
- The Ministry of Commerce;
- The Ministry of Industry and Trade;
- The Ministry of Justice;
- The Central Bank or Superintendency of Banks;
- Banks and bankers’ association;
- Microfinance institutions;
- Insurance companies;
- Warehouse operators;
- Collateral management companies;
- Commodity inspection companies;
- Microfinance institutions;
- Transport companies;
- Farmers and farmers’ associations/cooperatives;
- Agricultural traders/middlemen/exporters;
- Agricultural processors/dryers/mills;
- Law firms and law societies/bar associations;
- Commodity exchanges;
- The Chamber of Commerce and other business organizations;
- NGOs and international organizations, including other donors;
- Representatives of academia.

Organizing a workshop with a large audience of stakeholders is a good opportunity to give them the opportunity to acquaint themselves with the experiences of other countries that have undertaken a WRS reform, to show the systems that were implemented and their impact, and to lay out the reasons why a WRS would be well suited and beneficial for the country or region considered. Such a workshop will be helpful to garner support from stakeholders, build momentum for reform and identify potential Working Group members.

5. Assemble a Working Group of stakeholders: Once the main stakeholders have been identified, a Working Group should be formed to work on the WRS reform. This Working Group should include the main stakeholders and champions. The ultimate goal of the Working Group’s work will be to design and transmit a draft of the WRS Law to the Government. Care should be taken in the selection of the Working Group and in the facilitation of the Working Group’s discussions to avoid excess influence by certain constituencies who might be motivated to steer the legislation in directions that could favor the commercial interests of the group they represent to the detriment of the broader community and of the WRS’s overall success. For instance, depositors will naturally strive to create a system maximizing the protection and rights they

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9 See page 43 for a more detailed explanation of the Program Management Team’s composition, roles and responsibilities.
have over deposited goods, while minimizing their costs. Financiers, on the other hand, will want to see strict restrictions imposed on collateral and the obligations of warehouse operators. Warehouse operators for their part will attempt to limit as much as possible their duties and responsibilities toward depositors and lenders. Any move to extremes in any of these three directions would imperil the system’s viability, as it would discourage at least one of the system’s main constituents from participating.

6. Guide the Working Group through the reform process:

Once assembled, the Working Group needs to acquire some in-depth knowledge of the operational and legal concepts supporting a WRS. The PMT must guide the Working Group through this information gathering and reform building process by organizing a set of events, along the following lines:

- **First meeting of the Working Group:** This meeting should be devoted to determining the roles and responsibilities of the Working Group and to deciding on an action plan that includes clearly defined activities and expected outputs and outcomes. It is recommended that the government appoint the reform’s Champion as President of the Working Group. The President of the Working Group will call meetings, decide on each meeting’s agenda, facilitate the Working Group’s discussions and be eventually responsible for ensuring that the WRS Law issued by the Working Group is passed by Parliament. The Project Leader will take care of the logistics of Working Group meetings, including preparing the supporting documents needed prior to and during each meeting. Working Group members will have to commit to review all the documents that are sent to them, to consult with the stakeholders they represent, and to propose and discuss changes to the WRS Law prepared by the Working Group.

- **Second meeting:** Prior to the second meeting, the Project Leader will send in-depth background information on the WRS. The second meeting of the Working Group will be the opportunity for Working Group members to discuss at length the WRS’s operational and legal concepts and to ask questions to the WRS experts mobilized by the Project Leader.

- **Third meeting:** Prior to the third meeting, the legal experts hired by the Project Leader will perform a stocktaking of the current local and regional legal systems and adapt the model WRS law to the local and regional legal contexts. The new “localized” version of the WRS model law will be sent to Working Group members so that they can review it and prepare questions, comments, and change proposals.

- **Final meetings:** From the third meeting onward, Working Group members and WRS experts will refine the WRS Law until it is finalized and eventually presented by the President of the Working Group to the Government and then legislative body. The Program Management Team will then play a key role in monitoring the legislative process and ensuring that the Government and parliamentarians receive appropriate technical support to understand the proposed WRS Law’s key features. The legislative process will take more or less time, depending on each country’s context. Once the WRS Law is passed, additional meetings will be held to develop the regulations to operationalize the law.

**Figure 10: Working Group Meetings**

- **Working Group’s 1st meeting:** Defining roles and responsibilities and establishing the Working Group’s roadmap
- **Working Group’s 2nd meeting:** Exploring the main legal and operational concepts of a WRS
- **Working Group’s 3rd meeting:** Discussing the first draft of the model WRS Law adapted to the local legal context
- **Working Group’s final meetings:** Finalizing the Working Group’s WRS Law

It will also be the opportunity for those experts to present the format of the model law that will be sent to Working Group members and be discussed in the following meeting.
Risk Management

When implementing WRS legislation reforms, it is possible to encounter general risks that are common to many projects of this nature, like political risks and/or financial risks. There are also risks that are more specific to warehousing legislation, which could be considered as technical risks. The table below provides an overview of some of the most common risks throughout the WRS reform process and how the Program Management Team can partially or completely mitigate those risks. It should be noted that a different set of risks will be encountered when implementing the WRS once the law and regulations are in place.

Table 4: Risks and Mitigation Measures along the WRS Reform Process

<table>
<thead>
<tr>
<th>Risk</th>
<th>Mitigating Factors</th>
<th>Likelihood &amp; Impact</th>
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| 1. Commitment to reform:                                             | • Find a reform minded government Champion to support reforms  
• Involve and work with senior technical officials and not just high level political appointees  
• Build consensus among other ministries or government institutions (e.g., Central Bank) to ensure continuous support  
• Involve influential non-governmental stakeholders with enduring commitment to reform  
• Build momentum for reform and support to the project from the private sector  
• Anticipate that government agencies will be preoccupied with political issues during elections and governmental/constitutional reorganizations | • Moderate likelihood  
• High impact: potential substantial delays or even termination of the reform process |
| 2. Change of the WRS Law’s key content:                              | • Gain access to decision makers to present case if possible (e.g., often, access to a trusted non-political legal expert to whom the Government will turn for advice will help to move things forward)  
• Highlight in detailed written reports to decision makers the implementation risks triggered by proposed changes to the WRS Law  
• Emphasize difficulties created to ensure funding for and support of next stage of the project from donors and other supporters of the project | • Moderate likelihood  
• High impact: implementation of a flawed legal and regulatory framework can jeopardize the whole WRS effort |
### 3. Stakeholder resistance

Reform conflicts with interests of certain stakeholders (e.g., established traders with access to finance) and some stakeholders attempt to scuttle the WRS reform

<table>
<thead>
<tr>
<th>Risk</th>
<th>Mitigating Factors</th>
<th>Likelihood &amp; Impact</th>
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<td></td>
<td>• Identify in advance the potential for conflicts and clarify the objectives of all key stakeholders before launching the WRS reform efforts</td>
<td>• High likelihood: most often, some actors have vested interests in the status quo, which needs to be addressed early on in the process</td>
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<td>• Include stakeholders from both sides—advocating and opposing the reform—into the Working Group crafting the WRS Law and regulations</td>
<td>• High impact: potential substantial delays of the reform process (high risks for the implementation phase as well if the matter is not dealt with during the legislative reform stage)</td>
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<td>• Negotiate with stakeholders to resolve conflict and bring them onboard the reform process and eventually the WRS implementation</td>
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<tr>
<td></td>
<td>• Attempt to counsel, assist, empower stakeholders whose interests would be jeopardized if the reform initiative is blocked or reduced in effectiveness</td>
<td></td>
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Introduction

Risk Perception from Stakeholders

Stakeholders will be interested in taking part in the Warehouse Receipt System (WRS) only if they deem that the balance between the risks and rewards expected from the WRS appears favorable, i.e., if risks can be managed and a profit can be made.

Depositors considering delivering goods to the custody of the warehouse operator, banks considering advancing credit against a warehouse receipt, purchasers considering the opportunity of buying the stored goods will all try to assess two main risks:

- **Risk of non-performance by the warehouse operator**, i.e., failure to deliver the goods upon presentation of the warehouse receipt; and
- **Risk of invalidity of the warehouse receipt to transfer good title to the goods, free of claims of third parties**, i.e., not acquiring real and enforceable ownership of the goods when acquiring the warehouse receipt.

Objectives and Scope of the WRS Legislative Reform

By reducing the risks perceived by WRS stakeholders, the legislation can lead to creating market acceptance of warehouse receipts, and can encourage banks, in particular, to provide credit under reasonable costs/rates to the borrowers. A flawed legal system can, by contrast, create obstacles to broad acceptance and utilization by the community.

When implementing a full-fledged WRS reform, the overall objective should be to endow the system with security that encourages market participants to freely trade and finance the underlying warehoused goods. A well designed legal system will try to contain the risks mentioned above, notably by:

- **Defining the relative priorities among different claimants**, thereby alleviating the risk of warehouse receipt invalidity; and,
- **Regulating the enforcement mechanism of these rights**, including the protection against the non-performance of the warehouse operator.

In order to facilitate reliable storage, finance and trading of agricultural goods, the goal of the legislative reform should be to draft, adopt and implement modern and appropriate law and regulations:

- Governing the rights and obligations of warehouse operators and the holders of warehouse receipts;
- Providing for the licensing and supervision of warehouses storing agricultural goods;
- Providing for registration of warehouse documents; and
- Conferring on warehouse documents the status of documents of title to goods so that the documents and the underlying goods can easily be transferred and traded.
Defining the Scope of Reform

Importance of the Existing Legal Tradition

Modern WRS legislation is in theory adaptable to any legal system regardless of its legal tradition. However, any approach to implementing WRS legislation reform must take into account the existing local conditions and customary practice. Challenges may arise from the following:

- Legal environment—Modernization by adoption of a WRS is likely to be more complicated in countries with a tradition of comprehensive warehousing legislation, which is the case mostly in countries with a tradition of written statute or code (e.g., Civil Law countries), as changing existing legislation will be more difficult than enacting entirely new laws;
- Use of notaries—The mandatory use of notaries for the creation of title claims, and in particular for the creation of pledges, is inappropriate in the context of warehouse receipts. The perception that the WRS is disenfranchising local notaries from their established role as legal gatekeepers of key documentation may bring forth some resistance; and
- Competing registration systems—in countries that have invested in one or more registries for interests in movable goods or intangibles, the idea that the transfer of rights to goods covered by warehouse documents should be exempt from registration will be harder to accept. However, the better practice when establishing a WRS is to create a separate central registry for issuance, amendment, transfer, and cancellation of warehouse documents and not to require other notification or registration.

In addition, with respect to secured financing, the following practices will present challenges if they exist in the jurisdiction considered:

- Requirement to possess collateral from the creditor (possessory pledge);
- Need for specific description of property subject to an interest and preclusion of use of future property and changeable property as security; and,
- Protection of debtors in enforcement to the point that enforcement becomes excessively costly and unlikely to succeed in a timely manner.

Defining the Scope of the Legislative Reform’s Content

Modern WRS legislation does not exist in a vacuum. Nor does it redefine all aspects of law relating to the relationships it encompasses. It functions in the context of, for example:

- Basic property law;
- Contract law;
- Bankruptcy law;
- Negotiable instrument law; and
- Other areas of the law related to commercial relationships.

Therefore, the existing laws must be examined in order to ensure that there are no inconsistencies with a WRS or, if inconsistencies exist, that, in the context of warehouse receipts, the rights and obligations established under the WRS law will take precedence.

Any conflict between the existing law and the new WRS should be resolved by including express provisions in the new law that the new law controls in the limited context of goods in warehouses. Otherwise, conflicts will have to be addressed through amendment to the existing law (probably the more difficult approach and more likely to be resisted by practitioners).

To determine the legislative efforts that will be needed to create a full-functioning WRS, the pertinent existing body of legislation needs to be:

1. Mapped by collecting, analyzing, and examining it in the context of the required reform; and
2. Replaced with the relevant provisions of a modern WRS legislation.
Box 6: Advantages of Mapping the Existing Legal Environment

The mapping approach has a number of practical advantages:

• It will assist in assessing the extent of the reform needed;
• It will assist in determining one of two methods of reform:
  • Enacting new warehousing legislation with harmonization of related legislation; or
  • Reforming existing legislation without enacting new legislation;
• It provides a simple and clear reference for the extent of the reform required on existing legislation;
• It assists law reformers to understand modern warehousing legislation and its components;
• It allows for a continuous and updated procedure of reform taking into account any intervening amend-
  ments to related legislation during the period of the reform; and
• It leaves local jurisdictions with an organized methodology and infrastructure to monitor any further law
  reform necessary in the context of secured financing reform.

Mapping and Review of Existing Law

The following examples include legislation that typically exists in jurisdictions before a reform to their warehousing legislation takes place. There may be other laws that bear on warehousing legislation reform, so it is necessary to identify all relevant laws before beginning the reform. The examples illustrate the interactions and potential issues that may arise between a reformed law and existing legislation:

• Law Specifically Pertaining to Warehouses—
  In the event existing legislation or regulations or judicial precedents expressly apply to the rights and obligations of warehouse operators or the holders of warehouse receipts or other documents, such laws and precedents need to be examined for consistency with the new legislation. A decision early on will have to be taken as to whether the existing law should be amended, or whether it is easier to simply repeal it and start over with the new legislation. In either case, thought will have to be given to the status and right of persons holding warehouse documents issued under the old regime once the new law is passed. This subject is highly complex and can be handled in a number of alternative ways depending upon the circumstances.

• Sales Law—Under the law of some jurisdictions, when a seller repossesses movable property sold
  under a title retention sales agreement, the contract is deemed to have been terminated and the seller is required to return to the buyer any refundable portion of the purchase price paid up to the time of the repossession. If the goods are covered by a warehouse receipt issued or transferred to the buyer, the law will have to include a procedure to enable the unpaid seller to require the warehouseman to deliver the goods to the order of the unpaid seller. If the warehouse receipt has been transferred or negotiated to a buyer or pledged to a bank in good faith, the rights of the unpaid seller will be lost.

• Bailment Law—The rights and obligations of bailors and bailees generally will be covered in some manner by existing laws. In the context of warehousing legislation, particularly where the objective is to create a reliable warehousing system and broad acceptance of warehouse documents as a means to encourage trade and financing of commodities, the policies may be different than in the traditional treatment of bailor/bailee relations.

• Secured Transactions Laws—The rights and obligations of secured creditors will be subject to existing legislation requiring some form of registration and providing some form of priority (e.g., first to file). In order to function properly, security created by delivery of a warehouse receipt should not be subject to registration (apart from
notation in the warehouse receipts registry if one is established). Conflicts will occur between creditors that have taken a registered charge over goods that are subsequently deposited in a warehouse and covered by a warehouse receipt that is issued to a second lender. The modern approach is to provide in warehouse legislation that the second lender takes priority if he is without knowledge that the goods are charged and the first lender acquiesced to the warehousing of the goods by the borrower.

- **Codes** (e.g., Civil or Commercial Codes)—Some jurisdictions have codes that contain all commercial legal provisions. Although the substance of the warehousing law will probably differ from some of the existing concepts (and in the context of warehouse documents, it should take precedence), the format of the warehousing law should be consistent for ease of assimilation into practice.

- **Tort Law**—There will be jurisprudence defining such basic tort concepts as fraud, conversion, unjust enrichment, theft and negligence that could be applied to determine the liability of warehouse operators for loss, damage or inability to deliver goods covered by warehouse receipts. These concepts will be refined in the comprehensive warehousing law and may be at variance with existing practice.

- **Laws Creating Lien Rights**—Security rights created by operation of the law (warehouse operators’ and transporters’ liens, for example) are commonly recognized under existing laws. In modern warehousing legislation, however, the treatment of lien rights will differ depending upon whether the warehouse document is negotiable or non-negotiable, the wording in the document, the nature of the debt owed to the warehouse operator, and the status of the holder (the original depositor or a transferee with or without notice of the claim). There will also be detailed procedures for the foreclosure of the lien in the event of non-payment. Existing legislation creating liens and priorities of liens must be examined as part of the law reform and, where inconsistent, should be expressly superseded by the warehousing law.

- **Contract Law**—Contract laws include provisions dealing with contract formation and transactions involving movable property. In the agricultural context, many farmers will be individual entrepreneurs rather than companies, and the literacy level may be low, which could affect their understanding of due diligence, clear identification of counterparties, and contract enforceability.

Contract law should, therefore, be examined as part of warehousing legislation reform.

- **Property Law**—The laws governing property generally should be examined. This should include the extent and circumstances in which the law recognizes exceptions to the principle of *nemo dat quod non habet* ("no one gives what he does not have") according to which the sale of goods by someone who does not have ownership rights over them does not grant any ownership title to the buyer. One such exception is the transfer of goods covered by a negotiable warehouse receipt, which is designed to stimulate trade in goods by establishing a level of certainty of title for the benefit of good faith purchasers for value. If a person in possession of property that is subject to an interest held by another person has the power to “pass good title” to a good faith purchaser, the priority regime of a warehousing legislation system would be rendered effective but at the expense of other claimants. Such conflicts will have to be addressed by special legislative measures as part of the warehousing legislation reform.

- **Bankruptcy Law**—In theory, bankruptcy law deals with the process of enforcing existing rights of creditors in case of liquidation or dealing with all creditors’ claims as part of the reorganization of the bankrupt. However, in some jurisdictions, bankruptcy legislation is more than procedural legislation and sometimes touches upon existing relative priorities of the bankrupt's creditors. In some jurisdictions bankruptcy legislation and warehousing legislation are under the jurisdiction of two different levels of government or are inconsistent with each other because of a lack of coordination in their reforms. Consequently, there is a risk of inconsistent approach in terms of priority rules as well as in terms of enforcement of security interests. Therefore, bankruptcy legislation must be considered and, if necessary, amended in the course of a warehousing legislation reform to ensure it is consistent with the policies underlying warehousing legislation reform. This can mean in general the following:
  - Priority provisions of secured creditors are generally consistent between the two laws;
  - Protection of the secured creditors’ rights during bankruptcy proceedings, including during reorganization or liquidation proceedings, is maintained to the extent possible;
  - Protection of the title to warehoused goods is not jeopardized by the insolvency of the warehouse operator (i.e., a bankruptcy court will consider
the warehoused goods to be the property of the depositors/warehouse receipt holders rather than of the warehouseman absent an agreement to the contrary; and

- Recognition of the right of the bank holding a warehouse receipt to liquidate the goods in the event of default by the borrower provided that the bank accounts to the bankruptcy court for the proceeds of sale.

- **Enforcement Law** (Code of Civil Procedure)—All jurisdictions with legislation dealing with creditor-debtor relationship must address enforcement of creditors’ rights against defaulting debtors. However, execution laws often include provisions that make it ineffective to enforce a creditor’s rights against movable property. As a result, in these jurisdictions, enforcement of creditors’ rights is often ineffective, thereby making the use of warehouse receipts unattractive as security.

A well-designed reform of warehousing legislation, especially in support of agricultural credit involving perishable commodities or commodities having a volatile market value, should either include reform of the enforcement law or provide in the warehousing legislation a separate enforcement process that makes use of self-help when possible and for expedited judicial enforcement when self-help is not an option. Clearly, in the context of goods held in warehouses, liquidation is simplified in comparison to cases where the debtor remains in possession of the goods, and enforcement procedures should recognize this special circumstance and encourage prompt liquidation while protecting the borrower against abusive practices.

### Identification of the Changes Needed to the Legal Framework

The next step of WRS reform is the analysis of the substantive changes to and new features of the legal framework that are required. This may involve:

- Assessment of the existing credit granting practices;
- Identification of possible new credit vehicles the reformed law should include;
- Evaluation of public policies for existing priority rules and whether they require reform;
- Determination of the characteristics of a new registry institution suitable for the particular jurisdiction; and
- Identification of necessary improvements to the process of enforcement of property rights.

Following the analysis of the necessary substantive changes and additions, the team must decide whether they can best be adopted as new comprehensive legislation on warehousing legislation or as changes to existing legislation without the need to enact a new law. As mentioned earlier, the mapping of the existing legislation described above will assist greatly in this process. Another factor in that decision is resistance in some jurisdictions to changes in the Civil Code or Civil Procedure Code for political reasons or because the Codes are revered by legal professionals and the judiciary. Consequently, enactment of specialized legislation for warehousing legislation is often the simpler and more successful reform. On the other hand, some jurisdictions may already have a progressive warehousing legislation, and an effective reform may be accomplished by amendments to existing legislation without the need for new legislation.

In summary, the final determination on the reform can only be made after:

- Mapping of pertinent provisions to modern secured transaction law;
- Setting out the objective and the scope of the reform;
- Determining public policies underlying priorities among conflicting claims;
- Determining type of registry that can be implemented;
- Determining type of enforcement mechanism which can be implemented;
- Determining the necessary substantive changes to the legal framework; and
- Determining whether to introduce new WRS legislation or to amend existing laws.
Key Features of the Law

Following the mapping of the existing legislation, the process of reforming the law may start. The minimum key elements of effective warehousing legislation are the creation of a document:

• That is freely negotiable or assignable;
• Whose form and content are prescribed by statute;
• Conferring title to the goods to a bona fide purchaser or financier who may liquidate the goods upon default in the manner prescribed by law;
• Issued by a recognized warehouse operator who has prescribed statutory duties and liabilities to the depositor and holders in respect of the goods and is entitled to a statutory lien for fees and charges which can be exercised as provided in the law.

Optional elements, which may be included if deemed appropriate and practical, are:

• Warehouse operator and warehouse location licensing (either generally or for particular commodities such as grains, oilseeds, coffee and cocoa);
• Minimum capital and insurance requirements;
• Periodic inspection by licensed inspectors;
• Registration of warehouse receipts;
• Issuance of electronic warehouse receipts;
• Requirement that warehouse receipts be issued on security paper; and
• Licensing of collateral management companies.

Necessary Components for a New Warehousing Legal Regime

It is important to ensure the fundamental components of a modern WRS legislation are included in the reformed law. The following discussion focuses on the required elements of any new WRS legislation to ensure it will be effective. The discussion covers the elements of a modern WRS legislation and describes as well the drafting techniques to ensure these elements fit within the domestic legal environment.

As a reminder of the discussion on warehouse receipt systems in Module 2, modern WRS regimes increase:

• Utilization of warehouse resources by producers, traders, processors and financiers, which reduces storage losses and price volatility and increases food security;
• Access to finance by commodity producers, processors and traders by reducing the risk of lending; and
• The efficiency of trading in the stored commodities and market liquidity.

They do so by increasing the reliability of warehouse storage and warehouse documents and defining the rights of warehouse receipt holders as against warehouse operators and persons having competing claims to the warehoused goods. This allows purchasers and financiers to take an interest in the goods with certainty of priority in the goods and assurance of transferability, liquidity, and enforceability of their acquired interest.

The features of the warehousing legislation that are necessary for the success of the regime are:

• Clear and comprehensive formulation of the rights and obligations of warehouse operators to depositors and other holders of warehouse documents;
• Licensing, supervision and inspection of warehouses and warehouse operators by an independent agency;
• Clear and comprehensive formulation of the rights and obligations of warehouse receipt holders as against transferors of warehouse documents;
• A comprehensive scheme for determining the relative priority of competing interests in the goods covered by warehouse documents;
• Clear and simple procedures for the transfer (by assignment or negotiation) of warehouse documents;
• Provision for a public registry in which the issuers and holders of warehouse documents may give notice of their interests and prospective lenders or purchasers may confirm the validity and subsequent transfer to themselves; and

• A simple and speedy enforcement process.

There are several dimensions to comprehensiveness of the law, and it is important for the law to address all of them. Those dimensions are:

• The types of parties to which the law applies must include natural and juridical persons, in any capacity or legal status, wherever located in the jurisdiction;

• There should be no limitations on the types of movable assets to which the law applies (although the implementation of the licensing regime may be limited to certain kinds of commodities, e.g., all agricultural commodities or grains and pulses);

• Licensing and registration should be voluntary and failure to obtain a warehouse operator’s license or to register a warehouse document should not affect its validity or enforceability as against the warehouse operator or any transferor; and

• A single system must cover the entire jurisdiction.

Model Law and Content

These are the subjects that should be treated in a new warehousing legal regime:

• Administration;
• Fees and Penalties;
• Suspension and Revocation of Licenses;
• Dispute Resolution and Arbitration;
• Title of Goods under a Warehouse Receipt;
• Posting of Licenses and Bonds;
• Publicity for Violations;
• Licensing Requirements;

• Insurance Requirements;
• Standards of Care for Particular Products;
• Warehouse Charges;
• Inspections of Licensed Warehouses;
• Reporting of Casualty Losses;
• Licensing of Inspectors, Graders and Weighers;
• Standards and Grades of Agricultural Commodities;
• Form of Warehouse Receipts;
• Printing of Paper Warehouse Receipts; and
• Electronic Warehouse Receipts.
Key Features of Implementing Regulations

Regulations are unnecessary unless there is provision for official warehouse supervision and licensing. If it is deemed necessary to implement supervision and licensing as a condition to the issuance of valid warehouse receipts, then it will be necessary to designate the body in charge of the licensing and supervision and if this is not an existing body (say, Ministry of Agriculture or a commodity exchange, as is the case in South Africa), then the law and the regulations will have to describe the make-up and management of the new authority as well as the initial regulations.

In most instances, the licensing body will adopt regulations based upon non-mandatory licensing, because it is more likely to attract broad industry support.

Regulations should feature provisions for fees, for issuance and suspension and revocation of licenses, for fines, and for detailed treatment of specific commodity warehouses (such as grain). There should be provisions for hearings, for promulgation of new regulations, for public commentary prior to adoption, for appointment of members of the body charged with supervision, and for periodic meetings. The supervisor will have to be able to engage staff to carry out the various duties which are assigned by the statute, also which will be covered by the regulations. The form of the regulations, particularly the management of the supervisory authority, will be based upon the administrative laws and practices of the country.

The following headings are included, and whatever the order and in whatever form, these are the subjects that should be treated in the regulations:

- Definitions;
- Who May Issue a Warehouse Receipt;
- Form of Warehouse Receipt;
- Liability and Duty of Care of the Warehouseman;
- Title of Goods under a Warehouse Receipt;
- Termination of Storage;
- Goods Must Be Kept Separate; Fungible Goods;
- Lien of Warehouseman;
- Duplicate Warehouse Receipt; Overissue;
- Obligation of Warehouseman to Deliver;
- Form of Negotiation;
- Rights Acquired by Due Negotiation;
- Document of Title to Goods Defeated in Certain Cases;
- Rights Acquired in Absence of Due Negotiation;
- Warranties on Negotiation and Transfer of Title;
- Lost or Missing Documents;
- Attachment of Goods Covered by a Negotiable Document; and
- Conflicting Claims; Interplead.
# Annotated Model Law

## WAREHOUSE RECEIPTS ACT

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Warehouse Receipts Act

Part 1

General

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Section 102. Definitions.

(a) “Bailee” means a person that by a warehouse receipt acknowledges possession of goods and contracts to deliver them.

(b) “Bearer” means a person in possession of a negotiable warehouse receipt that is payable to bearer or indorsed in blank.

(c) “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, and in the ordinary course from a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or a secured or unsecured credit, and may acquire goods or warehouse receipts under a pre-existing contract of sale. Only a buyer that takes possession of the goods or warehouse receipts covering such goods or has a right to recover such goods under applicable laws may be a buyer in the ordinary course of business. “Buyer in ordinary course of business” 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.

(d) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse.

(e) “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.

(f) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

An understanding of these definitions is essential to the comprehension of the Act. Many of these terms are referred to regularly and the meaning may be clearer in context than in the abstract. However in the event of any uncertainty as to the meaning of any term the operation of the law itself will be uncertain, so clarification should be requested.
### General

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<td>(h) “Holder” means any person in possession of a warehouse receipt if the goods are deliverable either to bearer or to the order of the person in possession.</td>
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<td>(i) “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. The term includes a person for which 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 if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.</td>
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<td>(j) “Person entitled under the document” means the 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.</td>
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<td>(k) “Purchase” means 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, and “purchaser” means a person that takes by purchase.</td>
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<td>(l) “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.</td>
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<td>(m) “Sign” means, with present intent to authenticate or adopt a record:</td>
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<td>(1) to execute or adopt a tangible symbol; or</td>
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<td>(2) to attach to or logically associate with the record an electronic sound, symbol, or process.</td>
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<td>(n) “Warehouse” means a person engaged in the business of storing goods for hire.</td>
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<td>(o) “Warehouse receipt” or “receipt” means a receipt issued by a person engaged in the business of storing goods for hire.</td>
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### Section 103. Relation of Act to Treaty or Statute.

(a) This Act is subject to any treaty or law or regulation to the extent the treaty, statute, or regulation is applicable.

(b) This Act does not modify or repeal any law prescribing the form or content of a warehouse receipt or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this Act. However, violation of such a law does not affect the status of a warehouse receipt that otherwise is within the definition of a warehouse receipt.

1. The law as drafted includes no regulation of warehouses. This subject is reserved for separate treatment. However, there will certainly be some level of official supervision of some types of warehousing activities (e.g., customs bonded warehouses, storage of hazardous substances, food cold-stores, strategic reserves of various commodities, etc.). The provision makes the Act subordinate to any other legislation or regulation that expressly applies to warehousing within the jurisdiction considered.
## General

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<td>2. Depositors and other holders of warehouse receipts should be entitled to the same rights and remedies under the Act whether or not the issuer is in compliance with applicable laws and regulations. This is not only fair and equitable, but it also ensures that warehouse receipts will be traded and acceptable as collateral without requiring buyers and lenders to engage in extensive regulatory due diligence regarding the issuers to ensure that the warehouse documents are enforceable under the Act.</td>
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### Section 104. Negotiable and Nonnegotiable Warehouse Receipt.

(a) Except as otherwise provided in subsection (c), a warehouse receipt is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.
(b) A warehouse receipt other than one described in subsection (a) is nonnegotiable.
(c) A warehouse receipt is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

The distinctions between negotiable and non-negotiable introduced in this Section refer to the most important principle in the Act, which is that the holder of a negotiable warehouse receipt may acquire more rights than the transferor had (see Section 402). A warehouse receipt is negotiable only if it satisfies this Section.

### Section 105. Reissuance in Alternative Medium.

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

1. the person entitled under the electronic document surrenders control of the document to the issuer; and
2. the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible warehouse receipt in substitution for an electronic warehouse receipt in accordance with subsection (a):

1. the electronic document ceases to have any effect or validity; and
2. the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

This section allows for warehouse receipts issued in paper form to be re-issued in electronic form, and vice versa, and sets forth the minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternative medium and if the issuer chooses to do so, it may impose additional requirements. Because a warehouse receipt imposes obligations on the issuer of the document, it is imperative for the issuer to be the one who issues the substitute document in order for the substitute document to be effective and valid.
Upon request of a person entitled under a tangible warehouse receipt, the issuer of the tangible document may issue an electronic warehouse receipt as a substitute for the tangible document if:

1. the person entitled under the tangible document surrenders possession of the document to the issuer; and
2. the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

Upon issuance of an electronic warehouse receipt in substitution for a tangible warehouse receipt in accordance with subsection (c):

1. the tangible document ceases to have any effect or validity; and
2. 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 tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Section 106. Control of Electronic Warehouse Receipt.

(a) A person has control of an electronic warehouse receipt if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic warehouse receipt, if the document is created, stored, and assigned in such a manner that:

1. a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
2. the authoritative copy identifies the person asserting control as:
   (A) the person to which the document was issued; or
   (B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

1. The section defines “control” for electronic warehouse receipts. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. The control concept embodied in this section provides the legal framework for developing systems for electronic warehouse receipts.

2. Control of an electronic warehouse receipt substitutes for the concept of endorsement and possession of the tangible document (see Section 401). A person with a tangible warehouse receipt delivers the document by voluntarily transferring possession and a person with an electronic document of title delivers the document by voluntarily transferring control. (Delivery is defined in the definitions).

3. Subsection (a) sets forth the general rule that the "system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." The key to having a system that satisfies this test is that identity of the person to which the document was issued or transferred must be reliably established. Of great importance to the functioning of the control concept is to be able to demonstrate, at any point in time, who is the person entitled under the electronic document.
(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
(4) 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;
(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

For example, a warehouse may issue an electronic warehouse receipt by having the required information in a database that is encrypted and accessible by virtue of a password. If the computer system in which the required information is maintained identifies the person as the person to which the electronic warehouse receipt was issued or transferred, that person has control of the electronic document. That identification may be by virtue of passwords or other encryption methods. Registry systems may satisfy this test. This section leaves to the market place the development of sufficient technologies and business practices that will meet the test.

To the extent that third parties wish to deal in a tangible medium, Section 105 provides a mechanism for exiting the electronic environment by having the issuer reissue the document of title in a tangible medium. Thus if a person entitled to enforce an electronic document of title causes the information in the record to be printed onto paper without the issuer’s involvement in issuing the document of title pursuant to Section 105, that paper is not a warehouse receipt.

4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe harbor test that, if satisfied, results in control under the general test in subsection (a). Under subsection (b), at any point in time, a party should be able to identify the single authoritative copy which is unique and identifiable as the authoritative copy. This does not mean that once created that the authoritative copy need be static and never moved or copied from its original location. To the extent that backup systems exist which result in multiple copies, the key to this idea is that at any point in time, the one authoritative copy needs to be unique and identifiable. Parties may not by contract provide that control exists.

The test for control is a factual test that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is satisfied.

5. In the electronic document regime, third party registry systems are just beginning to develop. It is very difficult to write rules regulating those third parties without some definitive sense of how the third party registry systems will be structured. Systems that are evolving to date tend to be “closed” systems in which all participants must sign on to the master agreement which provides for rights as against the registry system as well as rights among the members. In those closed systems, the warehouse receipt never leaves the system so the parties rely upon the master agreement as to rights against the registry for its failures in dealing with the document. This Act contemplates that those “closed” systems will continue to evolve and that the
control mechanism in this statute provides a method for the participants in the closed system to achieve the benefits of obtaining control allowed by this Section. The Act also contemplates that parties will evolve open systems where parties need not be subject to a master agreement. In an open system a party that is expecting to obtain rights through an electronic document may not be a party to the master agreement. To the extent that open systems evolve by use of the control concept contained in this section, the law of contracts, agency, and torts as it applies to the registry’s misfeasance or negligence concerning the transfer of control of the electronic document will allocate the risks and liabilities of the parties as that other law now does so for third parties who hold tangible documents and fail to deliver the documents.
PART 2
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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<td><strong>Section 201. Person That May Issue a Warehouse Receipt.</strong></td>
<td>It is not intended to repeal any provisions of special licensing or other statutes regulating who may become a warehouse. Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. See Section 103 and Section 301 (4) on the liability of the issuer in such cases.</td>
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**Section 202. Form of Warehouse Receipts; Effect of Omission.**

(a) A warehouse receipt need not be in any particular form.
(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:
   (1) a statement of the location of the warehouse facility where the goods are stored;
   (2) the date of issue of the receipt;
   (3) the unique identification code of the receipt;
   (4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
   (5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
   (6) a description of the goods or the packages containing them;
   (7) the signature of the warehouse or its agent;
   (8) 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
   (9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, 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, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

This section does not displace any particular legislation that requires other terms in a warehouse receipt or that may require a particular form of a warehouse receipt. This section does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long as the receipt falls within the definition of “warehouse receipt” in the Act. The only consequence of a warehouse receipt not containing any term listed in subsection (b) is that a person injured by a term’s omission has a right as against the warehouse for harm caused by the omission.
### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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<td>(c) A warehouse may insert in its receipt any terms that are not contrary to this Act or the express provisions of applicable law and do not impair its express obligations of delivery or its express duty of care prescribed under this Act. Any contrary provision is ineffective.</td>
<td>This section provides the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor.</td>
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**Section 203. Liability for Nonreceipt or Misdescription.**

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

1. the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown,” “said to contain,” or words of similar import, if the indication is true; or
2. the party or purchaser otherwise has notice of the nonreceipt or misdescription.

This section provides the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor.

**Section 204. Duty of Care; Contractual Limitation of Warehouse's Liability.**

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

Subsection (a) continues the common law rule on the warehouse’s obligation to exercise reasonable care. Under subsection (b) a warehouse may limit its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or storage agreement without the term constituting an impermissible disclaimer of the obligation of reasonable care. Subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use.
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sections of the Law | Draftsman’s Commentary
--- | ---
(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.  
(d) This section does not modify or repeal any statute that imposes a higher responsibility upon the warehouse or invalidates a contractual limitation that would be permissible under this Act.

Section 205. Title under Warehouse Receipt Defeated in Certain Cases.
A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

1. The typical case covered by this section is that of the warehouse-dealer in grain, and the substantive question at issue is whether in case the warehouse becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces the purchaser completely to the status of general creditor in a situation where there was very little the purchaser could do to guard against the loss.

2. This provision applies to both negotiable and non-negotiable warehouse receipts. The concept of due negotiation is provided for in Section 401. The definition of “buyer in ordinary course” provides, among other things, that a buyer must either have possession or a legal right to obtain the goods under applicable law (of sales) in order to be a buyer in ordinary course. However, this section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. This section is not satisfied by the delivery of the warehouse receipt to the buyer in ordinary course.

Section 206. Termination of Storage at Warehouse’s Option.
(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the 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 not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 210.

1. This section provides for three situations in which the warehouse may terminate storage for reasons other than enforcement of its lien as permitted by Section 210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse’s power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to the commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of “any charges,” but does not depend on the existence of unpaid charges.
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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<td>(b) If a warehouse 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 (a) and Section 210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.</td>
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2. In permitting expeditious disposition of perishable and hazardous goods, subsections (b) and (c) distinguish between the case where the warehouse knowingly undertakes to store hazardous goods and the case where the goods are discovered to be of that character subsequent to storage.

3. Protection of its lien is the only interest which the warehouse has to justify summary sale of perishable goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouse’s security.

| (c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse 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. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition. |

| (d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section. |

| (e) A warehouse 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 would have been bound to deliver the goods. |

Section 207. Goods Must Be Kept Separate; Fungible Goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner’s share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

1. As to most merchandise, the warehouse’s duty is to keep the goods of each depositor separate. Subsection (b) provides for the exception to the rule.

2. The rule in subsection (b) was developed in response to the needs of the grain trade and similar merchandise. “Fungible” is a defined term.

3. Holders to whom over-issued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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<td>Section 208. Altered Warehouse Receipts.</td>
<td>1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence which is a limited exception to the general rule in the second sentence. Electronic document of title systems should have protection against unauthorized access and unauthorized changes. See Section 106. Thus the protection for good faith purchasers found in the first sentence is not necessary in the context of electronic documents.</td>
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<td></td>
<td>2. Under the second sentence of this section, an unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouse. The rule stated in the second sentence applies to both tangible and electronic warehouse receipts.</td>
</tr>
<tr>
<td>Section 209. Lien of Warehouse.</td>
<td>1. Subsection (a) defines the warehouse’s statutory lien. Under the first sentence, a specific lien attaches automatically without express notation on the receipt or storage agreement with regard to goods stored under the receipt or the storage agreement. That lien is limited to the usual charges arising out of a storage transaction.</td>
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<td>Example 1: Bailor (the depositor) stored goods with a warehouse and the warehouse issued a warehouse receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the charges for storage and the other expenses of those goods. The warehouse may enforce its lien under Section 210 as against the bailor. Whether the warehouse receipt is negotiable or nonnegotiable is not important to the warehouse’s rights as against the bailor, nor is it important that a warehouse receipt was issued.</td>
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<td>Under the second sentence, by notation on the receipt or storage agreement, the lien can be made a general lien extending to like charges in relation to other goods. Both the specific lien and general lien are as to goods in the possession of the warehouse and extend to proceeds from the goods as long as the proceeds are in the possession of the warehouse. The same rules apply whether the receipt is negotiable or nonnegotiable and whether or not a warehouse receipt has been issued.</td>
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<td>(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest.</td>
<td>Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will also have a lien on goods covered by the warehouse receipt for storage charges and the other expenses for any other goods that are stored with the warehouse by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored other goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless of whether the receipt is negotiable or nonnegotiable and whether or not a warehouse receipt has been issued.</td>
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<tr>
<td>(c) A warehouse’s lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the 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. However, the lien or security interest is not effective against a person that before issuance of a warehouse receipt had a legal interest or a perfected security interest in the goods and that did not:</td>
<td>Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of that receipt by due negotiation is limited to the amount or rate specified on the receipt for the specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the specific goods covered by the receipt for storage after the date of the receipt.</td>
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<td>(1) deliver or entrust the goods or any warehouse receipt covering the goods to the bailor or the bailor’s nominee with:</td>
<td>Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable and has been duly negotiated (Section 401) to a person other than the bailor. Under the last sentence of subsection (a), the warehouse may enforce its lien against the bailor’s goods stored in the warehouse as against the person to whom the negotiable warehouse receipt has been duly negotiated (Section 402). That lien is limited to the charges or rates specified in the receipt or a reasonable charge for storage as stated in the last sentence of subsection (a).</td>
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<td>(A) actual or apparent authority to ship, store, or sell; or</td>
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<td>(B) power to obtain delivery under Section 403; or</td>
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<td>(C) power of disposition under any statute or rule of law; or</td>
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<td>(2) acquiesce in the procurement by the bailor or its nominee of any warehouse receipt or delivery order.</td>
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<tr>
<td>(d) A warehouse’s lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, “household goods” means furniture, furnishings, or personal effects used by the depositor in a dwelling.</td>
<td>Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has been duly negotiated (Section 401) to a person other than the bailor. Under the last sentence of subsection (a), the lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is not enforceable as against the person to whom the receipt has been duly negotiated. Without a statement of a specified amount or rate for the general lien, the warehouse’s general lien is not enforceable as against the person to whom the negotiable document has been duly negotiated. However, the warehouse lien for charges and expenses related to storage of lot A goods is still enforceable as against the person to whom the receipt was duly negotiated.</td>
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<td>(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.</td>
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<td>Example 5: Same facts as Examples 2 and 4 except the warehouse had stated on the negotiable warehouse receipt a specified amount or rate for the general lien on other goods (lot B). Under the last sentence of subsection (a), the general lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is enforceable as against the person to whom the receipt has been duly negotiated. 2. Subsection (b) provides for a security interest based upon agreement. Such a security interest arises out of relations between the parties other than bailment for storage, as where the bailee assumes the role of financier or performs a manufacturing operation, extending credit in reliance upon the goods covered by the receipt. Such a security interest is not a statutory lien. It is governed in all respects by the secured transactions regime of the country, except that subsection (b) requires that the receipt specify a maximum amount and limits the security interest to the amount specified. A warehouse could also take a security interest to secure its charges for storage and the other expenses listed in subsection (a) to protect these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses possession of the goods as provided in subsection (e). Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse receipt that states that the warehouse is taking a security interest in the bailed goods for charges of storage, expenses, for money advanced, for manufacturing services rendered, and all other obligations that the bailor may owe the warehouse. As allowed by subsection (b), a warehouse may rely upon its statutory possessory lien to protect its charges for storage and the other expenses related to storage. For those storage charges covered by the statutory possessory lien, the warehouse is not required to use a security interest under subsection (b). 3. Subsections (a) and (b) validate the lien and security interest “against the bailor.” Under basic principles of derivative rights as provided in Section 404, the warehouse lien is also valid as against parties who obtain their rights from the bailor except as otherwise provided in subsection (a), third sentence, or subsection (c).</td>
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<td><strong>Example 7:</strong> Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt that also claims a general lien in other goods stored with the warehouse. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the bailee acknowledges that fact to the Buyer. The warehouse lien for storage of those goods is effective against Buyer for both the specific lien and the general lien (see Section 404).</td>
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<td><strong>Example 8:</strong> Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the goods while the goods are in the warehouse’s possession to Secured Party (SP) who properly perfects a security interest in the goods under the secured transactions regime. The warehouse lien is superior in priority over SP’s security interest.</td>
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<td><strong>Example 9:</strong> Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the negotiable document to SP SP properly perfects its interest in the negotiable document by taking possession through a “due negotiation” (see Section 401). SP’s security interest is subordinate to the warehouse lien (see Section 209 (a), third sentence). Given that bailor’s rights are subject to the warehouse lien, the bailor cannot grant to the SP greater rights than the bailor has, therefore perfection of the security interest in the negotiable document and the goods covered by the document through SP’s filing of a financing statement should not give a different result.</td>
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<td>As against third parties who have interests in the goods prior to the storage with the warehouse, subsection (c) provides that to validate the lien or security interest of the warehouse, the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner’s interest will not be subjected to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be protected because of the actual, implied or apparent authority of the depositor, or because of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under the second sentence of subsection (c). The language of Section 403 is brought into subsection (c) for</td>
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<td>purposes of clarity. The draftsman’s comments to Section 403 are helpful in interpreting delivery, entrust-ment or acquiescence.</td>
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<td>As to household goods, however, subsection (d) makes the warehouse’s lien “for charges and expenses in relation to the goods” effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouse to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency.</td>
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<td>Example 10: Bailor grants a perfected security interest in the goods to SP prior to storage of the goods with the warehouse. Bailor then stores goods with the warehouse and the warehouse issues a warehouse receipt for the goods. A warehouse lien on the bailed goods for the charges for storage or other expenses arises under subsection (a). The warehouse lien is not effective as against SP unless SP entrusted the goods to the bailor with actual or apparent authority to store or sell the goods or with power of disposition under subsection (c) (1) or acquiesced in the bailor’s procurement of a warehouse receipt under subsection (c) (2). This result obtains whether the receipt is negotiable or nonnegotiable.</td>
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<td>Example 11: Sheriff who had lawfully repossessed household goods in an eviction action stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The lien is effective as against the owner of the goods (see subsection (d)).</td>
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<td>4. This section creates a statutory possessory lien in favor of the warehouse on the goods stored with the warehouse or on the proceeds of the goods. The warehouse loses its lien if it loses possession of the goods or the proceeds (see subsection (e)).</td>
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<td>5. Where goods have been stored under a nonnegotiable warehouse receipt and are sold to the person to whom the receipt has been issued, frequently the goods are not withdrawn by the new owner. The statutory lien for charges on the goods sold, granted by the first sentence of subsection (a), continues valid unless the warehouse gives it up. See Section 303. But once a new receipt is issued to the buyer, the buyer becomes “the person on whose account the goods are held” under the second sentence of subsection (a); unless the buyer undertakes liability for charges in relation to other goods stored by the seller, there is no general lien against the buyer for such charges. Of course, the bailee may preserve the general lien in such a case either by an arrangement by which the buyer “is liable for” such charges, or by reserving a security interest under subsection (b).</td>
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<td>6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the bailment have a storage agreement or a warehouse receipt is issued. In the modern warehouse, the bailor and the bailee may enter into a master contract governing the bailment with the bailee and bailor keeping track of the goods stored pursuant to the master contract by notation on their respective books and records and the parties send notification via electronic communication as to what goods are covered by the master contract. Warehouse receipts are not issued. See Comment 4 to Section 204. There is no particular form for a warehouse receipt and failure to contain any of the terms listed in Section 202 does not deprive the warehouse of its lien that arises under subsection (a). See the draftsman’s comment to Section 202.</td>
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Section 210. Enforcement of Warehouse’s Lien.

(a) Except as otherwise provided in subsection (b), a warehouse’s lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells 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. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.
(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

1. Subsection (a) makes “commercial reasonableness” the standard for foreclosure proceedings in all cases except non-commercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale are set forth in subsection (b). Notification of intention to foreclose may be sent by any reasonable means. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

2. The provisions of subsections (d) and (e) permitting the warehouse to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices.

3. A warehouse may have recourse to an interpleader action in appropriate circumstances (see Section 503).

4. If a warehouse has both a warehouse lien and a security interest, the warehouse may enforce both the lien and the security interest simultaneously by using the country’s secured transactions regime. Section 210 adopts as its touchstone “commercial reasonableness” for the enforcement of a warehouse lien. Following the procedures of the country's secured transactions regime satisfies “commercial reasonableness.”
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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<td>(3) The sale must conform to the terms of the notification.</td>
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<td>(4) The sale must be held at the nearest suitable place to where the goods are held or stored.</td>
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<td>(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must 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. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.</td>
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<td>(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.</td>
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<td>(d) A warehouse may buy at any public sale held pursuant to this section.</td>
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<td>(e) A purchaser in good faith of goods sold to enforce a warehouse’s lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse’s noncompliance with this section.</td>
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<td>(f) A warehouse may satisfy its lien from the proceeds of any sale 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.</td>
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<td>(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.</td>
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<td>(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).</td>
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<td>(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.</td>
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### WAREHOUSE RECEIPTS: GENERAL OBLIGATIONS

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<td><strong>Section 301.</strong> Irregularities in Issue of a Receipt or Conduct of Issuer.</td>
<td>The bailee’s liability on its document despite non-receipt or misdescription of the goods is affirmed in Section 203. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of warehouse receipt imposes on the issuer the obligations stated in the Act. For example, a bailee will not be permitted to avoid its obligation to deliver the goods (Section 303) or its obligation of due care with respect to them (Section 204) by taking the position that no valid “document” was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty (see Section 103).</td>
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The obligations imposed by this Act on an issuer of a warehouse receipt apply to a warehouse receipt even if:

1. 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;
2. the issuer of the receipt violated laws regulating the conduct of its business;
3. the goods covered by the receipt were owned by the warehouse when the document was issued; or
4. the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

**Section 302.** Duplicate Warehouse Receipt; Overissue.

A duplicate or any other warehouse receipt purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to Section 105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the issuer is not liable for preparing and delivering such a duplicate copy.

Section 105 allows documents of title to be reissued in another medium. Re-issuance of a document in an alternative medium under Section 105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the substitute document is not issued in compliance with Section 105, then the document should be treated as a duplicate under this section.

2. The section applies to nonnegotiable receipts to the extent of providing an action for damages for one who acquires an unmarked duplicate from a transferor who knew the facts and would therefore have had no cause of action against the issuer of the duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights of its transferor.
WAREHOUSE RECEIPTS: GENERAL OBLIGATIONS

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<td>3. Overissue is defined so as to exclude the common situation where two valid receipts of different issuers are outstanding for the same goods at the same time. For example, a warehouse receipt may be outstanding against goods, and the holder of the receipt may issue delivery orders against the same goods. In these cases dealings with the subsequently issued documents may be effective to transfer title; e.g., negotiation of a delivery order will effectively transfer title in the ordinary case where no dishonesty has occurred and the goods are available to satisfy the orders. Section 403 provides for cases of conflict between documents of different issuers.</td>
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Section 303. Obligation of Bailee to Deliver; Excuse.

(a) A bailee shall deliver the goods to a person entitled under a warehouse receipt if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose entitlement to the goods was rightful as against the claimant;
(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse’s lawful termination of storage;
(4) release, satisfaction, or any other personal defense against the claimant; or
(5) any other lawful excuse.

(b) 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.

1. This section describes the cases in which previous deliveries or other circumstances operate to excuse the warehouse’s normal obligation on the document.
2. The principal case covered by subsection (a) (1) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse facility and takes a negotiable receipt, the warehouse is not liable on the receipt if it has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See Section 403 (a). However, if the owner entrusted the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner receiving delivery would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the warehouse a defense against such a holder (see Sections 7402 (a) (2) and 403 (a) (1)).
3. Subsection (a) (2) amounts to a cross reference to all the applicable law (including but not limited to this Act) that determines the responsibilities and standards of care applicable to commercial bailees. In the absence of other governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Section 204.
WAREHOUSE RECEIPTS: GENERAL OBLIGATIONS

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<td>(c) Unless a person claiming the goods is a person against which the warehouse receipt does not confer a right under Section 403 (a):</td>
<td>4. There is no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the warehouse must request payment of the amount of its lien when asked to deliver, and only in case this request is refused is it justified in declining to deliver because of non-payment of charges. Where delivery without payment is forbidden by law (for example, in the case of storage of goods in bond), the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction with the priorities given to the warehouse lien under Section 209. If the parties are in dispute about whether the request for payment of the lien is legally proper, the warehouse may have recourse to interpleader. See Section 503.</td>
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<td>(1) the person claiming under a warehouse receipt shall surrender possession or control of any outstanding negotiable warehouse receipt covering the goods for cancellation or indication of partial deliveries; and</td>
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<td>(2) the bailee shall cancel the warehouse receipt or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.</td>
<td>5. Subsection (c) states the obvious duty of a warehouse to take up a negotiable warehouse receipt or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that stated in subsection (a) (1) of this section (delivery to rightful owner) and in Section 403 (a). Subsection (c) is limited to cases of delivery to a claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to enforce the warehouse lien.</td>
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<td>6. When courts are considering subsection (a) (5), “any other lawful excuse,” among others, includes compliance with court orders under Sections 501, 502 and 503.</td>
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Section 304. No Liability for Good-Faith Delivery Pursuant to Warehouse Receipt.

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 is not liable for the goods even if:

(1) 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

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

This section uses the test of good faith, as defined in Section 102, to mean “honesty in fact and the observance of reasonable commercial standards of fair dealing.” The section applies for example to delivery to a fraudulent holder of a valid warehouse receipt or delivery order as well as to delivery to the holder of a forged or otherwise invalid document. Of course, in appropriate circumstances, a warehouse may use interpleader or other dispute resolution process (see Section 503).
PART 4

WAREHOUSE RECEIPTS: NEGOTIATION AND TRANSFER

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<td><strong>Section 401. Form of Negotiation and Requirements of Due Negotiation.</strong></td>
<td>1. Subsection (a) is limited to tangible (paper) negotiable warehouse receipts.</td>
</tr>
<tr>
<td>(a) The following rules apply to a negotiable tangible warehouse receipt:</td>
<td>Subsection (b) applies to negotiable electronic receipts. Delivery of a negotiable electronic document is through voluntary transfer of control. The control concept as applied to negotiable electronic warehouse receipts is the substitute for both possession and endorsement as applied to negotiable tangible documents of title (see Section 106).</td>
</tr>
<tr>
<td>(1) If the document’s original terms run to the order of a named person, the document is negotiated by the named person’s endorsement and delivery. After the named person’s endorsement in blank or to bearer, any person may negotiate the document by delivery alone.</td>
<td>The Act does not separately define the term “duly negotiated.” However, the elements of “duly negotiated” are set forth in subsection (a) (5) for tangible documents and (b) (3) for electronic documents. In order to effect a “due negotiation” the negotiation must be in the “regular course of business or financing” in order to transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away rights which are not its own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.</td>
</tr>
<tr>
<td>(2) If the document’s original terms run to bearer, it is negotiated by delivery alone.</td>
<td>There are two aspects to the usual and normal course of mercantile dealings, namely, the person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose protection will really further trade. Obviously, the second question posed by the “regular course” qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor itself may not have such rights to pass, and even though the transferor may be acting in breach of duty? In raising this question the “regular course” criterion has the further advantage of limiting the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: it is also clearly outside the range of regular course.</td>
</tr>
<tr>
<td>(3) If the document’s original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.</td>
<td></td>
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<tr>
<td>(4) Negotiation of the document after it has been indorsed to a named person requires endorsement by the named person and delivery.</td>
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<tr>
<td>(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.</td>
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<tr>
<td>(b) The following rules apply to a negotiable electronic warehouse receipt:</td>
<td></td>
</tr>
<tr>
<td>(1) If the document’s original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.</td>
<td></td>
</tr>
<tr>
<td>(2) If the document’s original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.</td>
<td></td>
</tr>
<tr>
<td>(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.</td>
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</table>
Endorsement of a non-negotiable warehouse receipt neither makes it negotiable nor adds to the transferee’s rights.

Any notice on the document sufficient to put a merchant on inquiry as to the “regular course” quality of the transaction will frustrate a “due negotiation.” Thus irregularity of the warehouse receipt or unexplained staleness may appropriately be recognized as negating a negotiation in “regular” course.

A pre-existing claim constitutes value, and “due negotiation” does not require “new value.” A usual and ordinary transaction in which documents are received as security for credit previously extended may be in “regular” course, even though there is a demand for additional collateral because the creditor “deems himself insecure.” But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is “paid” by delivery of a warehouse receipt, any question of “regular” course disappears, as the case is explicitly excepted from “due negotiation.”

2. Negotiation under this section may be made by any holder no matter how the holder acquired possession or control of the document.

3. Subsections (a) (3) and (b) (2) make explicit that a negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation, it may very well be in “regular course.”

### Section 402. Rights Acquired by Due Negotiation.

(a) Subject to Sections 205 and 403, a holder to which a negotiable warehouse receipt has been duly negotiated acquires thereby:

1. title to the document;
2. title to the goods;
3. all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
4. the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense 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.

1. This section applies to both tangible and electronic documents of title. The elements of “duly negotiated,” which constitutes a due negotiation, are set forth in Section 401. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section (see Section 403).
2. Subsection (a) (3) covers the case of “feeding” of a duly negotiated document by subsequent delivery to the warehouse of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document to claim that the warehouse receipt does not attach to the after-deposited goods.
3. The explicit statement in subsection (a) (4) of the bailee’s direct obligation to the holder precludes the defense that the document in question was “spent” after the warehouse had delivered the goods to a previous holder. But the holder is subject to such defenses
WAREHOUSE RECEIPTS: NEGOTIATION AND TRANSFER

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<td>(b) Subject to Section 403, title and rights acquired by due negotiation are not defeated by any surrender of the goods by the bailee and are not impaired even if: (1) the due negotiation or any prior due negotiation constituted a breach of duty; (2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or (3) A previous sale or other transfer of the goods or document has been made to a third person. as non-negligent destruction even though not apparent on the document. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 403 (b) and the Draftsman’s Commentary.</td>
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Section 403. Warehouse Receipt to Goods Defeated in Certain Cases.

(a) A warehouse receipt or delivery order confers 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: (1) deliver or entrust the goods or any warehouse receipt or delivery order covering the goods to the bailor or the bailor’s nominee with: (A) actual or apparent authority to ship, store, or sell; (B) power to obtain delivery under Section 303; or (C) power of disposition under any statute or rule of law; or (2) acquiesce in the procurement by the bailor or its nominee of any warehouse receipt or delivery order.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt covering the goods has been duly negotiated. That title may be defeated under Section 404 to the same extent as the rights of the issuer or a transferee from the issuer.

1. In general it may be said that the title of a purchaser of a negotiable warehouse receipt by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the receipt if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief’s own order acquire power to transfer them to a good faith purchaser. Nor can a debtor defeat any rights of a secured party which have been perfected under the country’s secured transactions regime merely by wrongfully storing a portion of the crop or other goods. However, “acquiescence” by the secured party does not require active consent under subsection (a) (2) and knowledge of the likelihood of storage with no objection or effort to control it is sufficient to defeat the secured party’s rights as against one who takes by due negotiation of a negotiable document.

On the other hand, where goods are delivered to a dealer or aggregator for sale, even though the dealer or aggregator has made no advances and is limited in its duty to sell for cash, the goods are “entrusted” to the dealer “with actual . . . authority . . . to sell” under subsection (a) (1), and if the dealer procures a negotiable document of title it can transfer the owner’s interest to a purchaser by due negotiation. Further, where the dealer is in the business of selling, goods entrusted to it simply for storage may be entrusted under circumstances which give the dealer “apparent authority to store or sell” under subsection (a) (1), or power of disposition under a rule of law giving effect to apparent ownership.

Persons having an interest in goods also frequently deliver or entrust them to agents or servants other than dealers for the purpose of shipping or warehousing or under circumstances reasonably contemplating such action. This Act is clear that such persons assume full risk that the agent to whom the goods are so delivered
may ship or store in breach of duty, take a document to the agent’s own order and then proceed to misappropriate the negotiable document of title that embodies the goods. This Act makes no distinction between possession or mere custody in such situations and finds no exception in the case of larceny by a bailee or the like. The safeguard in such situations lies in the requirement that a due negotiation can occur only “in the regular course of business or financing” and that the purchase be in good faith and without notice (see Section 401). Documents of title such as warehouse receipts have no market among the commercially inexperienced and the commercially experienced do not take them without inquiry from persons known to be truck drivers or petty clerks even though such persons purport to be operating in their own names.

Again, where the seller allows a buyer to receive goods under a contract for sale, though as a “conditional delivery” or under “cash sale” terms and on explicit agreement for immediate payment, the buyer thereby acquires power to defeat the seller’s interest by transfer of the goods to certain good faith purchasers. Both in policy and under the language of subsection (a) (1) that same power must be extended to accomplish the same result if the buyer procures a negotiable document of title to the goods and duly negotiates it.

This Comment 1 should be considered in interpreting delivery, entrustment or acquiescence in application of Section 209 (c).

2. Under subsection (a) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (a) (1) or (2). Thus the rights of a transferee of a nonnegotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee “delivers or entrusts” to the “person procuring” the delivery order or “acquiesces” in that person’s procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under Section 302. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way that the rights of a transferee may be defeated under Section 404. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer’s rights before notification of the holder’s rights. (Section 404 (b) (2)). But an accepted delivery order has the same effect as a document issued by the bailee.
WAREHOUSE RECEIPTS: NEGOTIATION AND TRANSFER

Section 404. Rights Acquired in Absence of Due Negotiation.

(a) A transferee of a warehouse receipt, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable warehouse receipt, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) 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; or

(2) 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

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

1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than the transferor has, even when the negotiation is formally perfect. This section recognizes the transferor’s power to transfer rights which the transferor has or has “actual authority to convey.” Thus, where a negotiable warehouse receipt is being transferred (that is, not “duly negotiated”) the operation of the principle of estoppel is not recognized. This means that the actual owner of the goods or secured party may assert its prior title claim to reclaim the goods from the innocent transferee. This section applies to both tangible and electronic receipts.

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because, for example, a requisite endorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than he would have had under the laws protecting purchasers in the case of sale of the goods themselves. True, the purchaser’s rights are not subject to defeat by attachment of the goods (Section 502) or surrender of them to the purchaser’s transferor; but on the other hand, the purchaser cannot acquire enforceable rights to control or receive the goods over the bailee’s objection merely by giving notice to the bailee. The appropriate remedy of a purchaser in such a situation is to regularize its status by compelling endorsement of the document (see Section 406).

2. As in the case of transfer—as opposed to “due negotiation”—of negotiable documents, subsection (a) empowers the transferor of a nonnegotiable document to transfer only such rights as the transferor has or has “actual authority” to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than the transferor actually has. Subsection (b) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his transferor by giving notice of the transfer to the bailee.
WAREHOUSE RECEIPTS: NEGOTIATION AND TRANSFER

<table>
<thead>
<tr>
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<tr>
<td>Subsections (b) (1) &amp; (2) require delivery of the goods to enable other creditors, buyers and lessees of the transferor to defeat the claims of the transferee. Delivery of the goods means the voluntary transfer of physical possession of the goods. For this reason holders of non-negotiable warehouse receipts are advised to notify the warehouse of the transfer prior or concurrently with the advance of funds to the transferor.</td>
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Section 405. Indorser Not Guarantor for Other Parties.

The endorsement of a tangible warehouse receipt issued by a bailee does not make the endorser liable for any default by the bailee or previous endorsers.

This section is limited to tangible negotiable receipts as the concept of endorsement is irrelevant to electronic documents of title or to nonnegotiable documents. Electronic documents of title will be transferred by delivery of control (see Section 106). The endorsement of a tangible document of title is generally understood to be directed towards perfecting the transferee’s rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an endorsement given for value guarantees future action, namely, that in which the bailee has not yet become liable upon the document at the time of the endorsement. Under such circumstances the endorser, of course, engages that appropriate honor of the document by the bailee will occur (see Section 402 (a) (4) as to negotiable delivery orders). However, even in such a case, once the bailee attorns to the transferee, the indorser’s obligation has been fulfilled and the policy of this section excludes any continuing obligation on the part of the endorser for the bailee’s ultimate actual performance.

Section 406. Delivery without Indorsement: Right to Compel Indorsement.

The transferee of a negotiable tangible warehouse receipt has a specifically enforceable right to have its transferor supply any necessary endorsement, but the transfer becomes a negotiation only as of the time the endorsement is supplied.

1. This section is limited to tangible receipts as the concept of endorsement is irrelevant to electronic documents of title. Electronic documents will be transferred by delivery of control (see Section 106). From a commercial point of view the intention to transfer a tangible negotiable receipt or delivery order which requires an endorsement for its transfer, is incompatible with an intention to withhold such endorsement and so defeat the effective use of the document. Further, the preceding section and the Comment thereto make it clear that an endorsement generally imposes no responsibility on the endorser.

2. Although this section provides that delivery of a tangible document of title without the necessary endorsement is effective as a transfer, the transferee, of course, has not regularized its position until such endorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this Act (see Section 401 (a) (5)) on “due negotiation”). Similarly, despite the transfer to the transferee of the transferor’s title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender (see Section 303 (c)).
### WAREHOUSE RECEIPTS: NEGOTIATION AND TRANSFER

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<tr>
<td><strong>Section 407. Warranties on Negotiation or Delivery of Warehouse Receipt.</strong></td>
<td>1. Delivery of goods by use of a document of title does not limit or displace the ordinary obligations of a seller or lessor as to any warranties regarding the goods that arise under other law. If the transfer of documents attends or follows the making of a contract for the sale or lease of goods, the general obligations on warranties as to the goods under the law are brought to bear as well as the special warranties under this section.</td>
</tr>
<tr>
<td>If a person negotiates or delivers a warehouse receipt for value, otherwise than as a mere intermediary under Section 408, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that: (1) the document is genuine; (2) the transferor does not have knowledge of any fact that would impair the document’s validity or worth; and (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.</td>
<td>2. The limited warranties of a delivering or collecting intermediary, including a collecting bank, broker, commodities exchange, etc., are stated in Section 408.</td>
</tr>
<tr>
<td><strong>Section 408. Warranties of Collecting Bank as to Warehouse Receipts.</strong></td>
<td>This limitation applies to all “intermediaries,” including commodity exchanges and brokers holding warehouse receipts on behalf of customers. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. It does not warrant the genuineness or effectiveness of the document (unless and except to the extent that other obligations are assumed as a matter of contract).</td>
</tr>
<tr>
<td>A collecting bank or other intermediary known to be entrusted with warehouse receipts on behalf of another or with collection of a draft 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 draft to be collected.</td>
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</table>
Sections of the Law

**Section 501. Lost, Stolen, or Destroyed Documents.**

(a) 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 may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it 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. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee’s reasonable costs and legal fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable warehouse receipt is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double 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.

Draftsman’s Commentary

1. Subsection (a) authorizes courts to order compulsory delivery of the goods or compulsory issuance of a substitute document. Compare Section 302. Courts are given discretion as to what is adequate protection when the lost, stolen or destroyed document was negotiable or whether security should be required when the lost, stolen or destroyed document was nonnegotiable. In determining whether a party is adequately protected against loss in the case of a negotiable document, the court should consider the likelihood that the party will suffer a loss. The court is also given discretion as to the bailee’s costs and legal fees. The rights and obligations of a bailee under this section depend upon whether the document of title is lost, stolen or destroyed and is in addition to the ability of the bailee to bring an action for interpleader (see Section 503).

2. Courts have the authority under this section to order a substitute document for either tangible or electronic documents. If the substitute document will be in a different medium than the original document, the court should fashion its order in light of the requirements of Section 105.

3. Subsection (b) follows the well-established commercial practice of bailees making delivery in good faith when they are satisfied that the claimant is the person entitled under a missing (i.e., lost, stolen, or destroyed) negotiable document. Acting without a court order, the bailee remains liable on the original negotiable document and, to avoid conversion liability, the bailee may insist that the claimant provide an indemnity bond (see Section 303).

4. Claimants on nonnegotiable instruments are permitted to avail themselves of the subsection (a) procedure because nonnegotiable receipts sometimes contain provisions that the goods shall not be delivered except upon production of the receipt. If the warehouse should choose to insist upon production of the receipt, the holder should have some means of compelling delivery on satisfactory proof of entitlement. Without a court order, a bailee may deliver, subject to Section 303, to a person claiming goods under a nonnegotiable document that the same person claims is lost, stolen, or destroyed.

5. The warehouse lien should be protected when a court orders delivery of the goods pursuant to this section.
**WAREHOUSE RECEIPTS: MISCELLANEOUS PROVISIONS**

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<td><strong>Section 502. Judicial Process Against Goods Covered by Negotiable Warehouse Receipt.</strong></td>
<td>1. The purpose of the section is to protect the bailee from conflicting claims of the holder of the warehouse receipt and the judgment creditors of the person who deposited the goods. The rights of the former prevail unless, in effect, the judgment creditors immobilize the negotiable warehouse receipt through the surrender of possession of a tangible document or control of an electronic document. However, if the warehouse receipt was issued upon deposit of the goods by a person who had no power to dispose of the goods so that the document is ineffective to pass title, judgment liens are valid to the extent of the debtor’s interest in the goods. 2. The last sentence covers the possibility that the holder of a document who has been enjoined from negotiating it will violate the injunction by negotiating to an innocent purchaser for value. In such case the judicial lien will be defeated.</td>
</tr>
<tr>
<td>If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for non-delivery of the goods or by original action.</td>
<td>1. The section enables a warehouse faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with the bailee. The bailee is protected from legal liability when the bailee complies with court orders from the interpleader. 2. This section allows the bailee to bring an interpleader action but does not provide an exclusive basis for allowing an interpleader. If the laws allow an interpleader in other situations, the bailee may commence an interpleader under those rules. Even in an interpleader to which this section applies, any other applicable laws regarding the process of interpleader apply to the bailee’s action for interpleader. For example, an interpleader statute or rule may permit a bailee to protect its lien or to seek legal fees and costs in the interpleader action.</td>
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**PART 6**

**MISCELLANEOUS GENERAL PROVISIONS**

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<td>This Act takes effect on [ ] 20[ ] .</td>
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<tr>
<td>Section 602. Repeals.</td>
<td>[Existing Laws in Conflict] are repealed.</td>
</tr>
<tr>
<td>Section 603. Applicability.</td>
<td>This Act applies to a warehouse receipt that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a warehouse receipt that is issued or a bailment that arises before the effective date of this Act even if the warehouse receipt or bailment would be subject to this Act if the warehouse receipt had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act.</td>
</tr>
<tr>
<td>Section 604. Savings Clause.</td>
<td>This Act will apply prospectively only to warehouse receipts issued or bailments that arise after the effective date of the Act. A warehouse receipt issued or a bailment that arises before the effective date of this Act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.</td>
</tr>
<tr>
<td>This Act will apply prospectively only to documents of title issued or bailments that arise after the effective date of the Act. To the extent that issues arise based upon documents of title or rights or obligations that arise prior to the effective date of this Act, prior law will apply to resolve those issues.</td>
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