

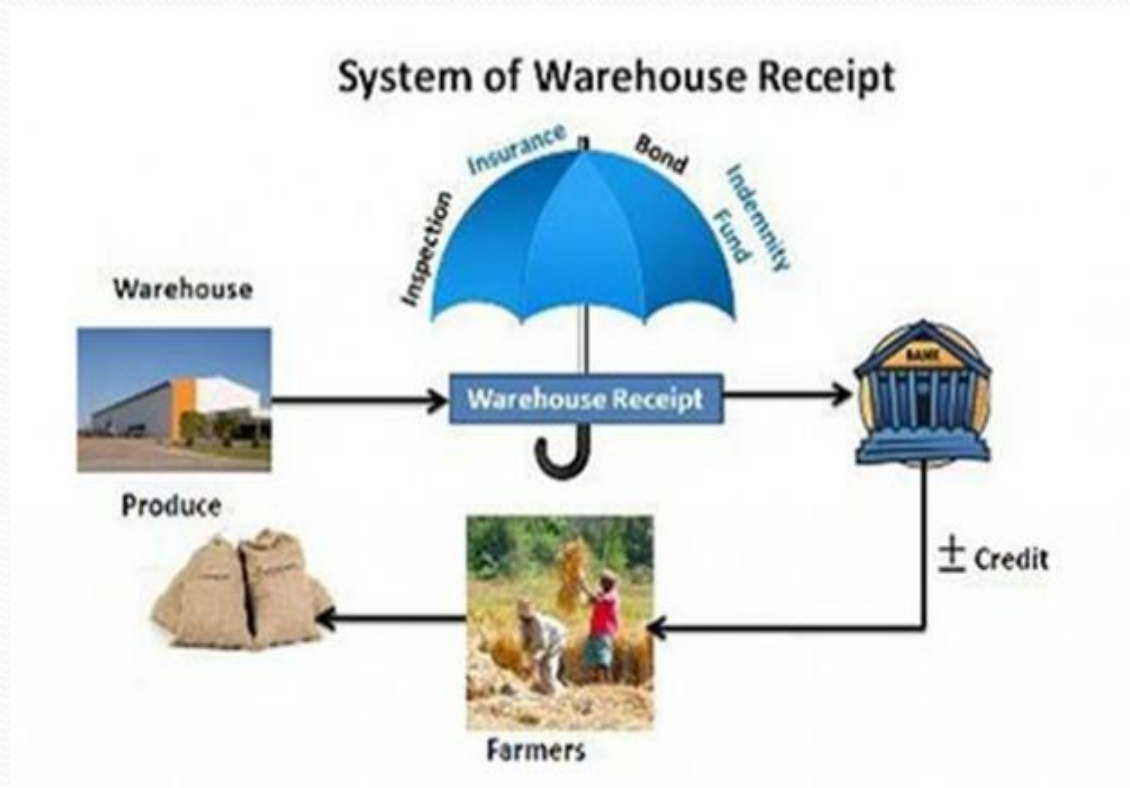
FAIRNESS | INTEGRITY | PROTECTION



# SECURITIES AND EXCHANGE COMMISSION, GHANA

*“Promoting the orderly growth and development of an efficient, fair and transparent securities market in which investors and the integrity of the market are protected through the proactive implementation of the Securities Laws”*

# A PRESENTATION ON THE DRAFT WAREHOUSE RECEIPTS REGULATIONS



PRESENTATION ON THE DRAFT WAREHOUSE  
RECEIPTS REGULATIONS (20/03/2018)

# BENEFITS OF A WAREHOUSE RECEIPT SYSTEM

- Article titled “Benefits of warehouse receipt system: Evidence from Africa” by Dr Gift Mugano, an Author and Expert in Trade and Development. He is a Research Associate at Nelson Mandela Metropolitan University and a Senior Lecturer at the Zimbabwe Ezekiel Guti University.
- The WRS addresses inefficiencies in agricultural markets, reduce post-harvest losses, opens up access to remunerative markets and reduces cheating.
- It is also obvious from the picture above that apart from farmers, jobs are likely to be created for the operators within the value chain like, graders, samplers, weighers etc

PRESENTATION ON THE DRAFT WAREHOUSE  
RECEIPTS REGULATIONS (20/03/2018)



# ORDER OF PRESENTATION:

- Introduction, scope and legal mandate of the section on warehouse receipts
- Licensing conditions for warehousing business
- Warehouse operators
- Warehouse receipts
- Offences and penalties
- miscellaneous

# INTRODUCTION ETC:

- Introduction, scope and legal mandate of the sec on warehouse receipts
- See sections 2, 3, 215 and 216 of the Securities Industry Act 2016 (Act 929).
- See sections 2 deals with requires the Commission to promote the growth and development of an efficient, fair and transparent securities market.



# INTRODUCTION ETC:

- **Section 216** defines a security to include warehouse receipts.
- **Section 3(c) and (d)** requires the Commission to register, license, authorize or regulate in accordance with Act 929 or the Regulations the securities industry to control and supervise their activities with a view to maintaining proper standards or conduct and acceptable practices in the securities business.

# INTRODUCTION ETC

- **Sections 215** requires that Minister may on the recommendation of the Commission by Legislative Instrument make Regulations prescribing matters required or permitted by the Act i.e Act 929 and for carrying out or giving effect to the Act.
- The above constitutes the legal basis for the preparation of the Regulations we are about to review today.



# INTRODUCTION ETC

The draft Regulations are divided into 6 parts. Part I to Part VI.

- **Part I of the Regulations. Warehouse Operators. Regulations 1-4**

Part I deals with the scope, functions and powers of the Commission in the regulation of warehouse receipts. The Regulations require the Commission to effect the following functions in Regulation 2:



# INTRODUCTION CONT'D

- licence warehouses that issue exchange traded warehouse receipts linked to a securities depository;
- license warehouse operators;
- license warehouse inspectors;
- license warehouse specialized staff;
- approve warehouse receipt systems; and
- carry out and perform such other functions as are conferred or imposed on it by these regulations.

# INTRODUCTION ETC, CONT'D

- Some of the powers of the Commission in respect of warehouses include the investigating the receiving, storing, conditioning and handling of goods and also to determine whether the warehouse for which licences are applied or have been issued are suitable to receive, store, condition and handle goods which are, or are expected to be received, stored, conditioned, or handled. **See Regulation 3**
- The Commission may delegate the performance of any of its functions to a corporate body which is capable of exercising such functions or powers. **See Regulation 4**



# LICENSING CONDITIONS

- **Part II of the Regulations. Regulations 5 to 17**
- This part deals with the conditions for granting licences by the Commission
- No person shall commence or carry on the business of maintaining a warehouse that issues negotiable warehouse Receipts unless he/she has obtained a licence granted by the Commission under these regulations in respect of the warehouse or warehouses. **See Regulation 5(1)**

# LICENSING CONDITIONS CONT'D

1. Before the Commission grants a licence to any person to operate a warehouse it shall satisfy itself of the following:-

- that the applicant is in possession of a Warehouse whether as a tenant or owner provided that, where the property is leased, the lease period shall be for a minimum period of two years;
- that the warehouse is suitable for warehousing of the respective goods in accordance with the regulations made under these Regulations;



# LICENSING CONDITIONS CONT'D

- that the applicant's director, business partner or manager is of good and sound business and management record and has not been involved in any criminal proceedings involving business and dishonesty or impropriety;
- that the warehouse and the goods which are or may be kept therein are fully insured at full market value in respect of fire, natural disasters including but not limited to flood, lightning and windstorm, theft and burglary or any other damage; and

PRESENTATION ON THE DRAFT WAREHOUSE  
RECEIPTS REGULATIONS (20/03/2018)

# LICENSING CONDITIONS CONT'D

- that the applicant is financially capable of conducting the business of warehousing.
2. Each warehouse operator applying for a licence under these Regulations shall
- Execute and file with the Commission a bond/insurance policy sufficient to secure the faithful performance of its obligations as a warehouse operator under these



# LICENSING CONDITIONS CONT'D

Regulations and any other applicable law.

**3. Types of goods and charges:** Each applicant is also required to file or have on file with the Commission information on the goods proposed to be warehoused and a copy of his schedule of charges as a warehouse operator.  
**See Regulation 7**

# LICENSING CONDITIONS CONT'D

4. **Specialised staff licence:** The Commission is also required to licence specialized staff like weighers, samplers, graders, warehouse inspectors etc. this will be done in collaboration with the Standards Authority

- **Role of Inspectors:** The warehouse inspectors shall among other things inspect the receiving, storing, conditioning and handling of goods stored in designated warehouses and shall submit an inspection report to the Commission within 14 days of the completion of the assignment.



# LICENSING CONDITIONS CONT'D

- The Commission in collaboration with the Standards Authority shall prescribe the qualifications and other conditions for the issuance of specialized staff licence.
- **Revocation, Suspension and Non- Renewal of Licence**
- The Commission may, after an opportunity to be heard has been afforded to the licensee concerned, suspend, revoke or refuse the renewal of any licence issued to any warehouse operator conducting business in a licenced warehouse under these regulations for any contravention of these regulations. **See Regulation 13**

# WAREHOUSE OPERATORS

## Part III of the Regulations. Warehouse Operators. Regulations 18 to 39

- Every Licensed warehouse operator shall receive for storage, conditioning, or handling, without discrimination, so far as the capacity and facilities of the warehouse shall permit, all goods in suitable condition for storage, conditioning, or handling and shall upon receiving any such goods issue therefore a Receipt or ticket. **See Regulation 18**



# WAREHOUSE OPERATORS

- A warehouse operator shall keep goods of each depositor separate from goods of other depositors and from other goods of the same depositor for which a separate Receipt has been issued.
- This assists in the identification and re-delivery of the goods deposited. **See Regulation 20**

# WAREHOUSE OPERATORS

- **Commingling:** If authorized by agreement, a warehouse operator may mingle fungible goods with other goods of the same kind and grade.
- **Duty to keep records and Accounts:** Every warehouse operator shall keep a complete and accurate set of records and accounts of all transactions including records and accounts of:-



# WAREHOUSE OPERATORS

- All goods received in the warehouse and withdrawn therefrom;
- All unissued Receipts in his possession;
- All sampling, grading and weighing results; and
- All Receipts issued, returned to, or cancelled, by him.

# WAREHOUSE OPERATORS

- **Duty to Deliver:** A warehouse operator shall deliver the goods referred to in a negotiable Warehouse Receipt, to the bearer of the Receipt on demand made by the bearer in accordance with Regulation 48 of these Regulations. **See Regulation 24**
- **Damages for late delivery and mis-delivery:** A warehouse operator shall be liable for damages for failure to deliver the goods within the stipulated time and also for misdelivery of the goods. **See Regulations 27 and 28**



# WAREHOUSE OPERATORS

- **Warehouse Operator's lien:** Every warehouse operator has a lien on goods deposited with him for storage. The lien of the warehouse operator is for the amount of the storage and maintenance charges.

# WAREHOUSE RECEIPTS

- **Part IV of the Regulations. Warehouse Receipts. Regulations 40 to 69**
- **What is a warehouse Receipt:** It is an acknowledgement in writing or in electronic form issued by a warehouse operator or his duly authorized representative of the Receipt for storage of goods not owned by the warehouse operator. **See Regulation 74**



# WAREHOUSE RECEIPTS

- A warehouse Receipt, may be in writing or in electronic form. It shall be a document of title to goods if it contains all the following particulars, namely:-
  - Receipt number;
  - warehouse licence number;
  - the location of the warehouse or other place where the goods are stored;
  - the name of the person by whom or on whose behalf the goods are deposited;
  - the date of issue of the Receipt;
  - a statement either:-

# WAREHOUSE RECEIPTS

- a. that the goods received will be delivered to the person by whom or on whose behalf the goods are deposited, or to another named person (**Non-negotiable**) See Regulation 42, or
- b. that the goods will be delivered to bearer or to the order of a named person (**Negotiable**) See Regulation 41;
- the rate of storage charges;
  - a description of the goods or of the packages containing them;



# WAREHOUSE RECEIPTS

- the signature of the warehouse operator or the authorized agent of the warehouse operator;
- a statement of the amount of any advance made and of any liability incurred for which the warehouse operator claims a lien.
- If a warehouse operator omits from a negotiable Receipt any of the particulars set out in sub-regulation (2), the warehouse operator is liable for damage caused by the omission. **See Regulation 43(3)**

# WAREHOUSE RECEIPTS

- There are two types of warehouse receipts under the Regulations:
- a. **Negotiable:** A warehouse Receipt in which it is stated that the goods received will be delivered to the person named in the Receipt or his order or to bearer or negotiable receipts endorsed in blank shall be known as a negotiable warehouse Receipt. **See Regulation 41(1)**



# WAREHOUSE RECEIPTS

- **b. Non-Negotiable warehouse receipts:** A warehouse Receipt in which it is stated that the goods received will be delivered to the depositor or to any other specified person is a non-negotiable Receipt. **See Regulation 42(1)**
- **Warehouse Receipt Terms:** Every warehouse receipt issued pursuant to the regulations shall contain the grade of goods received, a statement that the receipt is issued subject to the regulations, a clause that gives the operator the right to terminate storage, conditioning and handling

# WAREHOUSE RECEIPTS

- And such other terms and conditions as the Commission may require
- **Registration of negotiable warehouse receipts:**  
**Regulation 46** requires a warehouse operator to register all negotiable warehouse Receipts issued by him with an automated depository approved by the Commission.
- Once the receipt enters the depository, a contract is created or designed for the goods contained in the warehouse and that contract can then be traded on the Commodity Exchange just like we trade equities



# WAREHOUSE RECEIPTS

- **Delivery of goods after trading: Regulation 48** allows the warehouse operator to deliver the goods referred to in a negotiable Receipt, to the bearer of the Receipt on demand made by the bearer and on the bearer doing all of the following:
  - Satisfying the warehouse lien;
  - Surrendering the Receipt with endorsements necessary for the negotiation of the Receipt; and
  - Acknowledging in writing the delivery of the goods.

# WAREHOUSE RECEIPTS

- **Cancelling Negotiable Receipts on Delivery of Goods:** **Regulation 50** requires that after delivering the goods to a negotiable warehouse holder, the operator shall take up and cancel the Receipt.
- Failure to do this can create further liabilities for the warehouse operator if the receipt is subsequently used for other purposes. **See Regulation 66**



# OFFENCES AND PENALTIES

**Part V of the Regulations deals with offences and administrative penalties. Regulations 70**

- The are 5 main types of breaches that attracts different administrative penalty units
- **a. Breaches occasioned by the warehouse operator or any officer, agent or servant of a warehouse operator who wrongfully delivers goods, accepts for storage goods contaminated, delivers goods without cancelling the receipt etc, 1,000 penalty units. See Regulation 70(1)**

# OFFENCES AND PENALTIES

b. Breaches relating to issuing negotiable warehouse receipts without a valid licence, issuing receipts for goods not in the warehouse, issuing receipts in excess of goods held, issuing receipts with a different grade than the actual grade, etc 1,000 penalty units. **See Regulation 70(2)**

c. Breaches relating to obstructing a warehouse inspector or any authorized person in the performance of their functions the actual grade, etc 1,000 penalty units. **See Regulation 70(5)**



# OFFENCES AND PENALTIES

d. Breaches relating to compromises of the use of equipments to deceive in weighing, grading, sampling and documentation. This is an offence. Minimum of one (1) year with a fine or both or to both. **See Regulation 70(4)**

e. Other non-criminal Breaches for which a penalty is not provided for shall attract administrative penalty of 300 penalty units. **See Regulation 70(8)**

# MISCELLANEOUS

**Part VI of the Regulations deals with miscellaneous matters. Regulations 71-73**

- **Regulation 71** states that the termination of an operator's licence does not affect the validity of receipts issued under the licence so that the operator shall continue to comply with the regulations
- **Regulation 72** creates a statutory lien over goods deposited by the depositor in favour of the depositor.



# INTERPRETATION

- **Regulation 73** gives the Commission the power to issue guidelines for the purposes of effectively administering these regulations.
- **Regulation 74** is the interpretation section of the regulations dealing with technical terms.



**END**

**ANY QUESTIONS**



PRESENTATION ON THE DRAFT WAREHOUSE  
RECEIPTS REGULATIONS (20/03/2018)





# **END OF QUESTIONS**

# **THANK YOU**

PRESENTATION ON THE DRAFT WAREHOUSE  
RECEIPTS REGULATIONS (20/03/2018)