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European Bank
for Reconstruction and Development

Designing warehouse receipt legislation

Regulatory options and recent trends

DIRECTIONS IN INVESTMENT



FAO INVESTMENT CENTRE

Designing warehouse receipt legislation

Regulatory options and recent trends

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DIRECTIONS IN INVESTMENT

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ACRONYMS AND ABBREVIATIONS

| | |
|----------|--|
| ACPC | Agricultural Credit Policy Council (The Philippines) |
| ACTESA | Alliance for Commodity Trade in Eastern and Southern Africa |
| AMSDP | Agricultural Marketing Systems Development Programme (Tanzania) |
| CALF | Comprehensive Agricultural Loan Fund (The Philippines) |
| CDA | Agricultural Certificate of Deposit (Brazil) |
| CFC | Common Fund for Commodities |
| COMESA | Common Market for Eastern and Southern Africa |
| CONAB | National Supply Company (Brazil) |
| CPR | Cedula de Produto Rural (Brazil) |
| DACO | Deputy Administrator for Commodity Operations (United States) |
| DTI | Department of Trade and Industry (The Philippines) |
| EBRD | European Bank for Reconstruction and Development |
| ECA | Eastern Europe and Central Asia |
| ECX | Ethiopia Commodity Exchange |
| FAO | Food and Agriculture Organization of the United Nations |
| FCS | Farm Credit System (United States) |
| FSA | Farm Service Agency (United States) |
| GDP | Gross domestic product |
| GSE | Government-sponsored enterprise (United States) |
| GUL | Geneva Uniform Law on Bills of Exchange and Promissory Notes |
| IFC | International Finance Corporation (Indonesia) |
| IFAD | International Fund for Agricultural Development |
| IMF | International Monetary Fund |
| INMETRO | National Institute of Metrology, Quality and Technology (Brazil) |
| MAPA | Ministry of Agriculture, Livestock and Food Supply (Brazil) |
| MKK | Electronic Registry Agency (Ukraine) |
| NEDA | National Economic and Development Authority (The Philippines) |
| NFA | National Food Authority (The Philippines) |
| NGO | Non-governmental organization |
| OECD | Organization for Economic Co-operation and Development |
| PHP | Philippine peso |
| SACCO | Savings and Credit Cooperative Society (Tanzania) |
| SNCR | National System for Rural Credit (Brazil) |
| SRA | Sugar Regulatory Administration (The Philippines) |
| UETA | Uniform Electronic Transactions Act |
| UCC | Uniform Commercial Code |
| UCE | Uganda Commodity Exchange |
| UNCITRAL | United Nations Commission on International Trade Law |
| UNCTAD | United Nations Conference on Trade and Development |
| UNIDO | United Nations Industrial Development Organization |
| USAID | United States Agency for International Development |
| USC | United States Code |
| USDA | United States Department of Agriculture |
| USWA | United States Warehouse Act |
| WA | Agricultural Warrant (Brazil) |
| WDRA | Warehousing Development and Regulatory Authority (India) |
| WFP | United Nations World Food Programme |
| ZAMACE | Zambia Agricultural Commodities Exchange |



FOREWORD

Warehouse receipt systems allow agricultural producers to access credit by borrowing against receipts issued for goods stored in independently controlled warehouses. These systems enable producers to delay the sale of their products until after harvest, to a moment when prices are generally more favourable. Warehouse receipt systems can therefore mobilize credit for the agricultural sector and improve agricultural trade.

Warehouse receipt systems bring other benefits to the agricultural sector. For example, the provision of good handling and storage by warehouses licenced and controlled according to mandatory standards can help reduce postharvest losses and improve product quality. The increased storage of agricultural commodities after the harvest season may in turn contribute to stabilizing commodity price volatility. With respect to the management of national food security and strategic reserves, an effective warehouse system provides government authorities with timely and accurate information about the aggregate stock of stored agricultural commodities in the country.

Although warehouse receipt systems for agricultural commodities are used worldwide, their benefits and use depend on the design of the system and prevailing local conditions.

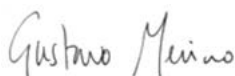
International experience shows that benefits are maximized when the receipt system is based on a well-designed and enabling legal framework that ensures integrity and transparency. Legislation is important to provide clarity and predictability to the rules governing the warehouse receipt system and to the rights and obligations of participants. However, it is often found in practice that the necessary legislation is not in place or does not accommodate the specific needs of the sector.

In recent years, many countries around the world have begun to introduce or reform legislation of their warehouse receipt system. Various objectives motivated the reforms, from mobilizing credit for the agricultural sector after market liberalization to adapting an existing system to the requirements of electronic commerce, or enhancing the income of smallholder producers.

The Food and Agriculture Organization (FAO), together with the European Bank for Reconstruction and Development (EBRD), has provided assistance to countries undertaking such legislative reforms. In delivering this assistance, it became apparent that a comprehensive guidance for the design of legislation governing warehouse receipt systems was missing. This publication is aimed at filling this gap and provides countries with guidance and evidence-based examples on how to develop enabling legislation. Based on a review of legislation worldwide, this study identifies different regulatory approaches and good practices for the design of warehouse receipt legislation.



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EXECUTIVE SUMMARY

Effective warehouse receipt systems allow agricultural producers to access credit at competitive rates by borrowing against receipts issued for goods stored in independently controlled warehouses. These systems enable producers to delay the sale of their products until after harvest, to a moment when prices are generally more favourable. Warehouse receipt systems can therefore mobilize credit for the agricultural sector and improve agricultural trade.

A supportive legal framework is a common precondition for confidence in and acceptance of warehouse receipts for producers, credit providers and market participants.¹ This publication aims to shed light on the development of warehouse receipt legislation for agricultural commodities and good regulatory practices worldwide, and to provide countries with guidance and country-based examples on how to develop enabling legislation.

Part I sets the stage by explaining the basic concept of warehouse receipt financing, the benefits of a functioning warehouse receipt system and the importance of legislation for warehouse receipt systems as well as its core elements and variable attributes.

Warehouse receipts are documents issued by warehouse operators that state the ownership of a specified good or commodity, its quantity and characteristics and in what warehouse it is stored. The basic concept for warehouse receipt financing for agriculture is largely the same in all countries. A farmer or other agricultural producer deposits a quantity of agricultural products in a warehouse. The warehouse issues a receipt to the producer, who can then use this receipt as collateral to obtain a loan from a creditor such as a bank or an agricultural inputs supplier. The producer sells the stored goods underlying the warehouse receipt when they are mature or market conditions are favourable. Depending on the agreement, the buyer pays either the creditor or the producer who in turn pays the creditor. After the loan is repaid, the creditor returns the warehouse receipt that the buyer takes to the warehouse to retrieve the bought goods.

A well-designed warehouse receipt system can provide various benefits for all parties involved. The extent of the benefits varies from one country to another depending on a country's conditions. Major benefits include the following:

- access to credit for farmers and other agricultural producers while enabling them to strategically delay the sale of agricultural products until after the harvest season;
- enhanced participation of smallholder farmers in the commodity market by allowing them to consolidate their crops in a warehouse and sell them jointly;²

¹ See FAO, 2009, p. 8; Lacroix & Varangis, 1996, p. 39; Martin & Bryde, 1999, p. 221.

² Coulter & Onumah, 2002, pp. 326, 335.

- reduced postharvest losses for smallholder farmers who use the system's warehouses that have mandatory storage and handling standards;
- reduced risks for creditors who lend to farmers and other agricultural producers through secure collateral;³
- mobilized credit for the overall agricultural sector;
- improved quality of agricultural commodities by determining mandatory quality standards for those commodities;
- enhanced agricultural trade through facilitated market transactions⁴ and, if warehouses are linked to a commodity exchange, improved exchange trading;⁵
- moderated high-season price fluctuations when agricultural commodities are stored until after the harvest season;
- information provided to government authorities about agricultural commodities stored in the country that can aid in forecasting food shortages.⁶

International experience shows that, to achieve these benefits, the receipt system should be based on a well-designed and enabling legal framework that ensures its integrity and transparency.⁷ Legislation is important as it provides clarity and predictability of the warehouse receipt system's rules and of the rights and obligations of the participants. Generally, all core elements of a warehouse receipt system need to be determined in legislation.

The core elements of warehouse receipt legislation are as follows:

- scope of its application and the goods or commodities that can be covered by warehouse receipts;
- institutional structure for the administration of the warehouse receipt system;
- licensing and oversight of warehouses;
- performance guarantees for warehouses;
- contractual rights and obligations of the parties;
- warehouse receipts, which include their legal status, content, form and registration;
- negotiation and transfer of receipts;
- settlement and release of stored goods;
- execution and priority of obligation;
- offences and penalties.

Part II provides guidance for countries wishing to introduce new, or reform existing, warehouse receipt legislation. This part highlights the necessary preliminary considerations when introducing or reforming the legal provisions of warehouse receipts. These considerations include identifying the relevant policy objectives of the agribusiness sector; identifying and assessing all existing legislation for its possible impact on a warehouse receipt system; and conducting a feasibility study of the contextual conditions and analysing its results.

³ See Giovannucci, Varangis & Larson, 2000, p. 1.

⁴ See also Coulter & Onumah, 2002, p. 336.

⁵ UNCTAD, 2009, p. 8.

⁶ Coulter & Onumah, 2002, p. 329.

⁷ See also Giovannucci, Varangis & Larson, 2000, p. 1.

Part II then presents, compares and analyses different options for designing the core elements of warehouse receipt legislation. This analysis is based on a review of the existing legislation on warehouse receipt financing worldwide and, in particular, the country case studies in Part III.

The analysis resulted in the following key observations:

- The most common objective of a reform or introduction of warehouse receipt legislation is to enhance access to credit in the agricultural sector. Beyond this, objectives vary widely. They range from facilitating farmers' access to adequate postharvest handling and storage facilities in sub-Saharan countries to fostering the use of grain warehouse receipts to attract private-sector investments in the grain sector in Kazakhstan.
- Effective and enabling legislation should protect the rights and obligations of depositors, creditors and warehouses to strengthen confidence among participants and ensure the wide use of warehouse receipts.
- The form of legislation on warehouse receipts and its details differ depending on the legal tradition of a country and the time of its initial introduction. These forms of legislation include a comprehensive specific law governing the overall warehouse receipt system or basic general provisions contained in the commercial or civil code. The majority of the countries reviewed in this study tend towards the first.
- The core elements of warehouse receipt legislation are commonly recognized by legislators. Yet, a variety of regulatory approaches exist to address each of them. These different approaches are shaped by the contextual factors and policy objectives of each country.
- Some core elements are similarly regulated in most of the reviewed countries:
 - The traditional approach for the institutional set-up is to designate a primary competent public authority to manage the warehouse receipt system.
 - Every country with legislation on a warehouse receipt system provides for a warehouse licensing and oversight system.
 - Legislators in many countries have paid special attention to the provision of performance guarantees, and it is a widespread regulatory approach to provide for mandatory insurance and bonding requirements. Country experience has shown that performance guarantees directly influence the confidence in and consequently the use of warehouse receipts by creditors and other participants.
 - While the legal format of warehouse receipts differs according to the legal tradition of the country, the required minimum details included on the receipts are largely similar in most countries.
- Other regulatory approaches are shared by a smaller number of countries:
 - A recent trend in some countries is the creation of a guarantee fund as an additional warehouse performance guarantee; it is based on voluntary or mandatory contributions of warehouses.
 - Another relatively new trend is the introduction of electronic warehouse receipts.
- In some countries where the general legal framework allows for it and court procedures are considered very time consuming, a good regulatory practice has

proved to be the provision of out-of-court enforcement, whereby a lender may recover on a defaulted loan based on the warehouse receipt.

The analysis of the core elements of warehouse receipt legislation in this publication shows the reader the spectrum of options for their regulation and a description of their potential benefits, weaknesses and relevant considerations. It points to guidance on good practices for developing enabling legislation for effective warehouse receipt financing according to country needs. However, there are no general recommendations or is no single model design for warehouse receipt legislation. Rules for effective organization and operation depend on country-specific legal, agricultural and economic conditions, and a legal framework should be tailored accordingly. The analysis allows a country that wishes to introduce or reform warehouse receipt legislation to compare the contextual factors with its own and to assess the available options for the system's legal design in light of its own specific conditions.

Part III contains country case studies selected from a review of warehouse receipt legislation worldwide. In many countries around the world, warehouse receipt financing has been common practice in the agricultural sector for decades, even centuries. The United States of America and many countries in Latin America and Western Europe have long-established warehouse receipt financing systems based on legislation introduced around the beginning of the 20th century or earlier. Some Asian countries such as China, Viet Nam and the Philippines also have long-established legal systems for warehousing.⁸

Other countries have instituted such systems more recently. For example, in Eastern Europe and Central Asia, numerous countries have introduced or reformed legislation on warehouse receipts since the 1990s, such as Bulgaria, Kazakhstan, Hungary and Turkey. In Eastern and Southern Africa over the last two decades, there have been numerous initiatives to promote warehouse receipts.⁹ Supporting legislation has been enacted in Tanzania, Uganda, Zambia and Ethiopia, amongst others. However, in many developing and transition countries, the use of warehouse receipts remains limited; one of the main constraints is the lack of an appropriate supporting legal framework.¹⁰ For example, several countries in the Balkans, Central Asia and the Caucasus do not have modern warehousing legislation in place.¹¹

The countries studied were selected to cover a broad geographical range and to include developing, transitioning and developed countries with different legal, agricultural and economic contexts. The following 12 countries are examined in detail: Argentina, Brazil, France, India, Indonesia, Kazakhstan, the Philippines, Tanzania, Turkey, Uganda, Ukraine and the United States of America. For each country, the regulation of the key elements of warehouse receipt legislation – identified in Part I and analysed in Part II – illustrates the different approaches for addressing the specific needs and challenges of the country. This publication also briefly introduces the countries' general legal, agricultural and economic contexts, and touches upon the legislation in practice, including circumstantial advantages and constraints.

⁸ See FAO, 2009, p. 14.

⁹ See UNCTAD, 2009, p. 7.

¹⁰ See Lacroix & Varangis, 1996, p. 36.

¹¹ See FAO, 2009, p. 10. For information on the status of warehouse receipt legislation in Eastern Europe, Central Asia and the Caucasus see generally the EastAgri homepage at www.eastagri.org.



PART I – Background and concept

Basic concept of warehouse receipt financing

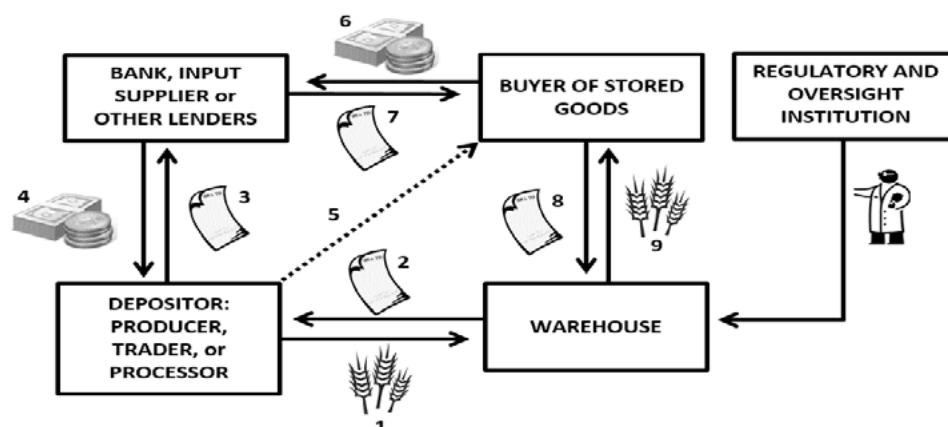
The basic concept of warehouse receipt financing for agriculture is largely the same in all countries with a warehouse receipt system. The first step is a farmer or other agricultural producer deposits a quantity of agricultural products in storage. Depending on the country and type of commodity, deposits may be made in a public, private or field warehouse. A public warehouse stores commodities for third parties and acts as a custodian for a set fee. A private warehouse is a storage facility on the site of a manufacturing or processing company. A field warehouse is a storage facility that is, entirely or in part, leased by a collateral management or credit support company from a depositor or a public warehouse for a nominal fee. The collateral management or credit support company is responsible for the control of the stored commodities.¹²

As shown in Figure 1, after a farmer or other agricultural producer deposits agricultural goods in a warehouse (1), the warehouse issues a receipt to the producer (2) who can then use this receipt as collateral (3) to obtain a loan from a bank or agricultural inputs supplier (4).

The loan is for a specified percentage of the market value of the goods in storage, depending on the lender's assessment of risk.¹³ Putting goods in storage allows producers to extend the period in which they are able to sell the harvested goods and to wait until more favourable market conditions arise. Upon maturity or in favourable market conditions, the producer sells the stored goods underlying the warehouse receipt (5). Depending on the agreement, the buyer either pays the creditor directly (6) or pays the producer who in turn pays the creditor. Upon loan repayment, the creditor returns the warehouse receipt (7) and allows the buyer to go to the warehouse, present the receipt (8) and retrieve the bought goods (9). Should the producer default and fail to repay the loan upon maturity, the lender holds the warehouse receipt and the ability to seize and sell the underlying stored goods to recover its loss.¹⁴

Although this publication primarily refers to farmers and other agricultural producers as "depositors" – given that the focus of the system in many countries is on farmers and other agricultural producers – it should be noted that agricultural processors, traders, importers and exporters may also use the system as "depositors" to raise finance against the receipts.

Figure 1: Basic concept of warehouse receipt finance



¹² See FAO, 2009, p. 16-19.

¹³ See *ibid.*, p. 16.

¹⁴ See Lacroix & Varangis, 1996, p. 36.

Benefits of a warehouse receipt system

A well-designed warehouse receipt system can provide benefits for all concerned parties including producers, traders, creditors and warehouses, as well as for the agricultural sector overall. Benefits may vary from one country to another, depending on country conditions.

For farmers and other agricultural producers, one important benefit is that it facilitates access to credit and allows for the delayed sale of agricultural products until after the harvest season, when price conditions are more favourable. Market liberalization in the agricultural sector can contribute to lower prices during harvest season, which subsequently raises prices as agricultural stock depletes. But warehouse receipt systems enable producers to store their goods in a licenced warehouse after harvest and wait until prices rise again to sell their produce. In the meantime, producers may use the warehouse receipt as collateral to obtain short-term credit to finance working capital requirements or household consumption needs.¹⁵

A warehouse receipt system can also enable smallholder farmers to participate in commodity markets by providing them with the possibility to consolidate their crops in a warehouse and sell jointly for higher prices to larger traders or processors further down the value chain. This is an important advantage in developing countries where evidence shows that smallholders could benefit from the system especially through participating in marketing groups.¹⁶ The system also helps reduce market transaction costs by allowing for independently enforced commodity standards, in particular that receipts are issued when commodity-specific quality standards are met.¹⁷

Effective warehouse receipt systems have other benefits for smallholder farmers. For example, the warehouse services could have benefits that depend on the needs of producers in a given country. Smallholder farmers in particular

can benefit considerably from the provision of postharvest handling and storage offered by warehouses, including cleaning, drying, grading, packaging, storing and preserving the product's quality so that producers can sell it later for a favourable price.¹⁸ Mandatory storage and handling standards for warehouses can help producers reduce postharvest losses, which are most substantial in sub-Saharan countries.¹⁹ Lastly, warehouse regulations that guarantee accurate weighing and quality grading benefit producers by ensuring that their products are accurately valued.²⁰

An effective warehouse receipt system also benefits financiers. The system can reduce the risks of lending to farmers and other agricultural producers by creating secure collateral.²¹ By allowing for the simple and quick liquidation of collateral in case of debtor default and the prioritization of the receipt holder's claims *vis-à-vis* other creditors in liquidation proceedings, the warehouse receipt system can effectively manage risk and loss recovery. The lenders' interests, in case of loss or damage of the stored commodities, are protected by performance guarantees that are required of licenced warehouses.

Lastly, the overall agricultural sector may benefit from mobilized credit and improved performance of agricultural marketing systems. Furthermore, increased storage of agricultural commodities after the harvest season may help stabilize commodity prices, thereby mitigating seasonal price fluctuations that can follow market liberalization in the agricultural sector. Also, a comprehensive warehouse receipt system can improve product quality through setting quality standards, improving storage and handling and overseeing compliance.

A warehouse receipt system can facilitate market transactions that are beneficial for various stakeholders, which can enhance agricultural

¹⁵ See *ibid.*, p. 36.

¹⁶ Coulter & Onumah, 2002, pp. 326, 335.

¹⁷ See Onumah et al., 2007, p. 22.

¹⁸ For example for smallholder farmers in Uganda, this is an important advantage of the introduction of warehouse receipt legislation in 2006-2007. See Wamala, 2010.

¹⁹ Coulter & Onumah, 2002, p. 326.

²⁰ *Ibid.*, p. 336

²¹ See Giovannucci, Varangis & Larson, 2000, p. 1.

trade.²² In particular, if warehouses are linked to a commodity exchange, as in South Africa, the system may also facilitate exchange trading, and receipts may be used as delivery in the commodity exchange.²³ Regional trade can be facilitated through harmonized commodity standards that allow trade of commodities based on their description and identification.²⁴ And an effective and transparent warehouse system provides government authorities with timely and accurate information about the aggregate of stored agricultural commodities in the country, which can help them forecast food shortages.²⁵

It should be noted that existing agricultural policies, market structure and legal framework must be carefully examined to determine the suitability of a warehouse receipt system for a given country. Factors that are likely to impact the potential benefits of a warehouse system include government interventions in relevant markets; existing agricultural trade policies (e.g. import restrictions, export taxes or export bans); the price dynamics governing the agricultural market; and the extent and nature of agricultural subsidies applied in the country. Likewise, the broader legal framework – concerning collateral, property rights, insolvency and enforcement procedures – may contain provisions that warehouse receipt legislation may not derogate from and that may limit its benefits.

Importance of warehouse receipt legislation

To achieve these benefits, warehouse receipt systems should be based on a well-designed, enabling legal framework.²⁶ Legislation can strengthen and harmonize the system and can ensure system integrity and transparency. It is also fundamental for creating a predictable policy environment for the market.

Legislation generally serves to achieve one or more policy objectives. In many cases, the underlying broad policy objective is to facilitate

farmers' access to agricultural credit and stimulate credit flows to the agricultural sector. To do this, the system must attract creditors who trust the system enough to make credit available at reasonable rates. For creditors, a supportive legal framework is a common precondition for confidence in and acceptance of warehouse receipts.²⁷

To strengthen warehousing sector integrity, a country can regulate who offers warehouse services and issues receipts. This can be achieved by establishing a mandatory licensing process for warehouses and providing for their supervision and inspections. A licensing process is established through legislation, which designates the authority in charge, determines the licensing requirements and prescribes inspections for compliance control.

To further ensure the warehouse receipt system's integrity, penalties for violations of the warehouse receipt provisions are important. A clear codification of offences and penalties, which can only be set out in legislation, deters violations of the rights and interests of participants. For example, legislation that establishes a penalty that disincentivizes fraud in warehouse receipts may deter potential violators. The deterrence effect increases if penalties are codified within not only the general criminal code but also the law governing the warehouse receipt system – concerned parties are more likely to notice the penalty provisions by virtue of the parties' involvement in the sector.

Furthermore, in case of debtor default a reliable, quick enforcement mechanism is important to attract creditors. Rules and procedures for liquidation proceedings and prioritizing legal claims of debt recovery can only be determined in legislation. Warehouse receipt legislation may facilitate the enforceability of claims of the collateral by allowing for its efficient liquidation in case of debtor default and prioritizing the receipt

²² See also Coulter & Onumah, 2002, p. 336.

²³ UNCTAD, 2009, p. 8.

²⁴ See Onumah, 2010, p. 17.

²⁵ Coulter & Onumah, 2002, p. 329.

²⁶ See also Giovannucci, Varangis & Larson, 2000, p. 1.

²⁷ See FAO, 2009, p. 8; Lacroix & Varangis, 1996, p. 39; Martin & Bryde, 1999, p. 221.

holder's ranking in the debt recovery process. This considerably builds confidence in the system by reassuring the creditor of a warehouse receipt that his or her rights are protected even in the case of debtor default.

A country may also seek to enhance the marketability and tradability of warehouse receipts, which depend *inter alia* on the level of integrity and transparency of their issuance and trade. To strengthen these levels, legislation can introduce a mandatory registration process for warehouse receipts. Furthermore, a clear legal status, mandatory requirements of form and content and rules for the receipts' negotiation and transfer are fundamental for their marketability. Legislation can also provide conditions for the recognition of electronic warehouse receipts as functionally equivalent to paper receipts, which in turn can facilitate commerce and reduce transfer costs.

Another frequent policy objective is to facilitate regional trade of commodities. This can be done with legislation aimed at harmonizing the warehouse receipt system among countries.²⁸ For example, with harmonized commodity standards, commodities can be traded solely based on their description.²⁹

Countries may want to revise their national legislation related to warehouse receipt finance to address specific gaps or weaknesses. For example, creditors may hesitate to grant credit against the receipts if the performance of a warehouse is perceived to be insufficiently ensured. Legal reform can introduce stronger performance guarantees, such as a mandatory indemnity fund.

Finally, the broader national legal framework in countries may contain provisions applicable to warehouse receipt finance such as those that concern negotiable documents, collateral, property rights and enforcement procedures. This can create contradictions or uncertainties about applicable rules, which may discourage potential

users and particularly financiers from accepting warehouse receipts. Specific legislation governing the warehouse receipt system can harmonize these provisions and ensure that uncertainties are avoided.

Core elements of warehouse receipt legislation

Although the basic concept of warehouse receipt financing is largely the same in every country with a warehouse receipt system, there are several key characteristics that vary and depend on the country's legal framework. Legal terminology may also differ from one country to another.

Legal frameworks governing a warehouse receipt system should regulate certain key elements, which are presented in the following list.

- **Scope and definitions:** Legislation determines the set of goods or commodities that warehouse receipts can be issued for. And it should define all key terms used in the law.
- **Administration:** Typically legislation designates a public authority to manage the warehouse receipt system and defines the authority's mandate and functions.
- **Licensing and oversight of warehouses:** Legislation can establish a system for licensing and supervising public warehouses. It may require warehouse managers to apply for a licence before they operate and issue receipts and prescribe the licensing requirements. Legislation assigns a competent institution to licence and inspect warehouses and determines this institution's mandate.
- **Performance guarantees for warehouses:** The legal framework may include a variety of measures to guarantee the performance of warehouses. Common forms of performance guarantees are mandatory insurance, performance bonds and letters of credit. Some countries also establish an indemnity fund.

²⁸ See e.g. for Eastern and Southern African countries that seek open borders for trade in grain: Onumah, 2010, p. 11.

²⁹ See Onumah, 2010, p. 17.

- **Contractual rights and obligations of the parties:** The primary obligation of warehouse operators as typically determined by legislation is to store goods for an agreed period of time and release them when the warehouse receipt is presented. The primary obligation of the person who deposits goods for storage is to pay the agreed storage fee and to retrieve the goods after the end of the storage period. The legislation also sets out the warehouse operator's ancillary obligations. In a number of legal systems, legislation determines which party will bear the risks of loss of or damage to the stored goods.
- **Legal status and format of the receipt:** Legislation usually provides for single or double warehouse receipts. Single warehouse receipts encompass the right of ownership and the right to pledge the underlying goods as collateral. Double or two-part warehouse receipts consist of a certificate of title and a certificate of pledge (also known as a certificate of deposit and a warrant).³⁰
- **Receipt details and form:** Laws or regulations may specify the information receipts must contain to identify the deposited goods and to detail the conditions of the underlying agreement. The legislation may prescribe that receipts be issued in paper or electronic form.
- **Registration of receipts:** Legislation may establish a government registration system for warehouse receipts and determine the responsibilities of the registration office.
- **Negotiation and transfer of receipts:** Warehouse receipts may be negotiable or non-negotiable. A non-negotiable receipt that does not convey a title cannot be transferred to another party without the explicit acknowledgement of the warehouse. A negotiable receipt serves as possessory collateral and can be endorsed to another party or traded on secondary markets.
- **Settlement and release of stored goods:** In general, a buyer or creditor may retrieve goods from a warehouse by presenting the receipt to the warehouse operator and paying any pending storage charges. In the case of double receipts, both documents must be presented together to the warehouse operator before the underlying goods may be released.
- **Execution and priority of obligations:** If a debtor defaults, the law determines how creditors may seize and liquidate the underlying stored goods and recover the debt. It may establish a rank order for obligations that must be satisfied from the proceeds of the sale, prioritizing the order between potential claims.
- **Offences and penalties:** Commonly, a legal framework for warehouse receipts determines offences and their penalties. For violations by warehouse operators, legislation can also include administrative measures such as suspension and revocation of warehouse licences.

Different options for the design of these basic provisions, with their advantages and how these provisions may fit within a legal system, will be explored in Part II.

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PART II – Reviewing and designing warehouse receipt legislation

Introduction

This section provides guidance for countries wishing to reform or introduce legislation to set up a warehouse receipt system. A country may want to undertake regulatory reform when farmers and other agricultural producers lack access to working capital. Agricultural producers may face difficulties accessing short-term finance by borrowing against their agricultural products after harvest, and they do not have other property to provide as collateral for credit.

While countries may take steps to liberalize their agricultural markets, the private sector can remain reluctant to enter the market and support the commercialization of agricultural products. This is because there are no low-risk methods of collateralization for banks and other credit providers, among other reasons. In other words, banks and other credit providers perceive the risk of lending to agricultural producers as high and are reluctant to grant agricultural credits. Hence, countries may want regulatory reform to address these challenges facing producers and credit providers and to improve access to agricultural credit through the introduction of a warehouse receipt system.

Beyond facilitating credit, other possible reasons for a country to undertake such reforms are to ensure adequate postharvest handling and storage services in public warehouses, and to enable smallholder farmers to better participate in the commodity market by providing them the possibility to consolidate their crops in the warehouse and sell them jointly.

Countries that reform or introduce warehouse receipt legislation should take into account several important preliminary considerations. These considerations include identifying the relevant policy and regulatory objectives for the agribusiness sector, identifying and assessing the relevant existing legislation and studying the

feasibility and contextual factors. The feasibility study would be conducted by agricultural market experts to assess the practical conditions for a warehouse receipt system, including the options for the funding of warehouses and the availability of the necessary supporting infrastructure. Countries can then decide upon the form and content for new or revised warehouse receipt legislation that is tailored to the national circumstances.

Any regulatory reform should begin with these preliminary considerations and accordingly, this chapter begins with their detailed review. Next is a comparative analysis and discussion of legislators' different options for the form of warehouse receipt legislation. And finally, the legislation is compared and analysed for different options for regulating the key elements, with a view to extracting good regulatory practices that have proved effective for specific needs and challenges of countries. The countries' experiences with specific regulatory approaches are compared, and some of the potential benefits and failures of them are identified. This analysis intends to offer guidance to countries when assessing and comparing the range of options for designing warehouse receipt legislation, and to present other countries' experiences. It is based on a comparative review of the regulation of the core elements from the country case studies contained in Part III. Additional countries are included where they provide further options for the regulation of specific elements of the legislation or identify common regulatory approaches, trends or regional characteristics.

Preliminary considerations

A warehouse receipt system is not likely to be widely adopted by agricultural producers, lenders and other market players if it is not tailored to meet the specific conditions of a particular country. Therefore, legislators must understand the policy and the legal and contextual landscape

in the country. While it is usually helpful to see how other countries with similar conditions and objectives have attempted reforms or introduced legislation on a warehouse receipt system, it is important to clearly identify and understand how their contextual landscape is similar to or differs from one's own.

Defining national policy objectives

The starting point for legislative reforms of a warehouse receipt system is to identify or define policy objectives relevant for an agricultural warehouse receipt system. Legislative reform serves one or more policy goals and drafters seek to implement them through legislative provisions. The reform or introduction of legislation for an agricultural warehouse receipt system can support a larger set of policy objectives. Often, these policy objectives will be included in the opening provisions for warehouse receipt system legislation so as to guide the interpretation and implementation of the legislation.

A broad policy objective that is shared among all reviewed countries is to facilitate the flow of credit to the agricultural sector to promote the development of a dynamic private sector. This was already an objective in the United States of America and France in the 19th and early 20th centuries. For example, the warehouse warrant was introduced in French legislation in the mid-19th century by several acts and decrees to facilitate credit flow and collateralization of stored goods.³¹ Similarly, the present federal system of warehouse receipt legislation in the United States was introduced in the early 20th century during a period when the government was actively addressing a lack of privately available agricultural credit.³² Since then many countries – in Africa, Asia, Latin America and more recently Eastern Europe and countries of the former Soviet Union – have trended towards liberalized economies, including agricultural markets.

In countries where the state withdraws from the market, the private sector is expected to

step in to promote the commercialization of agricultural products, which requires access to credit. However, it has been observed that in most countries the development of a dynamic private sector is seriously hindered by the lack of available credit and that warehouse receipt financing is at least one strategy to address this challenge.³³ Since the 1990s the introduction or reform of warehouse receipt legislation in several countries in Eastern Europe and Central Asia – e.g. Bulgaria, Kazakhstan, Hungary and Ukraine – aimed to mobilize credit for the agricultural sector. Similarly, following the market reform and liberalization movement of the agricultural sector in most African countries since the 1980s, there have been numerous initiatives to introduce and promote warehouse receipts to facilitate credit access.³⁴ For example, Tanzania, Uganda, Zambia and Ethiopia started to introduce warehouse receipt legislation within the last ten years.

Under the same broad policy objectives, legislation for warehouse receipts can be used to pursue poverty reduction goals and agricultural development targets. For example, warehouse receipt system reforms in Turkey were part of a multifaceted, multiyear reform effort designed to stabilize the agricultural sector and prepare the country for an eventual European Union membership push. In Turkey, broad agricultural policies are outlined in four-year strategic plans; the current Strategic Plan for 2013–2017 contains 17 objectives, such as raising rural living standards, improving the efficiency and quality of production methods and improving agricultural infrastructure.³⁵ Reforms to the warehouse receipt system were used as a tool to complement and further each of these objectives.

As context and needs differ from country to country, policy objectives and priorities for introducing or reforming warehouse receipt legislation also differ. Countries with similar agricultural and economic contexts tend to have similar policy objectives or priorities for the sector. For example, Uganda may be considered

³¹ See e.g., Baubeau, 2007, p. 8.

³² Federal Farm Loan Act of 1916, currently authorized by Farm Credit Act of 1971, 12 U.S.C. § 2001 et seq.; see also, Monke, 2010, p. 9.

³³ FAO, 2001, p. 3.

³⁴ See also UNCTAD, 2009, p. 7.

³⁵ Ministry of Food, Agriculture and Livestock of Turkey, 2013.

representative of most sub-Saharan countries. Uganda introduced warehouse receipt legislation in 2006–2007 to achieve two major policy objectives: facilitating farmers' access to effective postharvest handling and storage facilities and to expand the access to short-term, postharvest finance. In sub-Saharan countries, postharvest losses are substantial,³⁶ and the objective to reduce them is more important there than in other regions of the world. A warehouse receipt system can significantly reduce postharvest losses because it encourages farmers to store their agricultural commodities in well-organized warehouses with adequate postharvest handling and storage facilities.³⁷ Postharvest handling and storage offered by warehouses include cleaning, drying, grading, packaging, storing, and preserving the product's quality. These services help in particular smallholder farmers who cannot ensure this postharvest handling on their own.³⁸

The warehouse receipt system was also part of the effort of sub-Saharan countries to establish and stimulate commodity exchanges. For example the Zambia Agricultural Commodities Exchange (ZAMACE), established in 2007, recognizes the importance of a warehouse receipt system for the commodity market by stating that its mission is to “provide an efficient and vibrant Zambian and regional agricultural commodity exchange, supported by a warehouse certification and receipts system to enhance market access, liquidity and credibility in the Zambian commodities market.”³⁹ ZAMACE has also stated that trading activity from 2013 will be based on warehouse receipts to guarantee the quantity and quality of the traded commodities.

On the other hand, Ukraine's recent reforms of its already relatively new system for grain warehouse receipts provide a good example of a targeted reform designed to further a narrow policy objective. Ukraine's 2002 Law on Grain introduced provisions for grain warehouse receipts for the first time and was partly aimed at

“improving access to private credit resources by allowing grain producers to use grain as collateral for loans, or to sell, trade or use the receipts for delivery against financial instruments such as futures contracts.”⁴⁰ However, during the first years of implementation, it was observed that the grain warehouse receipt system in Ukraine did not function optimally as a credit facilitator because the lending financial institutions' trust had been undermined.⁴¹ After reviewing the system's implementation status, legislative drafters in Ukraine decided to try to improve lender confidence in the system. With this objective in mind, Ukraine legislators introduced a guarantee fund to back grain warehouse receipt performance.⁴²

Another example of a targeted legislative reform is introducing electronic warehouse receipts into an existing system. With the objective to adopt the warehouse receipt system to electronic commerce and facilitate the electronic issuance and transfer of receipts, several countries recently reformed their warehouse receipt legislation and made electronic receipts a voluntary option to paper receipts. In the United States of America, Article 7 “Warehouse Receipts, Bills of Lading and Other Documents of Title” of the Uniform Commercial Code (UCC), promulgated in 1951, was revised for the first time in 2003 to recognize electronic documents of title, including warehouse receipts. Electronic receipt format can facilitate the negotiation and transfer of receipts, reduce transfer costs, strengthen system transparency and reduce document fraud. Some countries followed. For example, Kazakhstan promulgated regulations to allow for electronic warehouse receipts in 2012, so that they could be issued and transferred more easily.⁴³

³⁶ Coulter & Onumah, 2002, p. 326.

³⁷ See Onumah, 2010, p. 9.

³⁸ For example for smallholder farmers in Uganda, this was an important advantage of introducing warehouse receipt legislation in 2006–2007. See Wamala, 2010.

³⁹ Zambian Commodity Exchange, zamace.org.

⁴⁰ See Arts. 37–46, Law on Grain. Ukraine; see also, FAO & EBRD, 2010, p. 23.

⁴¹ FAO & EBRD, 2010, pp. 23, 24.

⁴² See e.g., Law on amending certain laws concerning guarantee fund performance, 2012. Ukraine.

⁴³ Regulations on using electronic grain receipts, 2012. Kazakhstan.

Legislative assessment

Before introducing or reforming legislation, the relevant existing legislation in the country should be comprehensively assessed. This assessment should identify all legislation that could directly or indirectly impact a warehouse receipt system to determine the legal parameters for reform. Any existing warehouse receipt provisions should be examined to identify any weaknesses or gaps. This assessment plays a crucial role during the drafting process as it helps to ensure consistency across warehouse receipt legislation and the general legal framework and clarity with regards to their application. The general legislation often contains provisions on warehouses in a generic sense. Any new or reformed legislation on the warehouse receipt system may need to be harmonized with the general provisions and state where those shall remain applicable or where the new legislation prevails.

The constitution. In many countries, the constitution determines *inter alia* the state powers in the country and their limitations through fundamental rights and guarantees. It binds state authorities through constitutionally guaranteed civil rights, here relevant for occupational freedom and procedural rights. In a federal system, the constitution also determines the division of powers and responsibilities between the federation and the single states or subregions. For example, to ensure uniformity of provisions within the entire country and facilitate their country-wide acceptance, the legislative power over warehouse receipts as financial instruments is usually assigned to the federation and not to its single states. The execution of federal laws, however, may be assigned to the individual states and exercised through their authorities rather than federal agencies. If this is the case, warehouse receipt legislation must assign the executive power for licensing and inspection to state authorities. These provisions must be observed when designing the institutional structure in a warehouse receipt law.

Other areas that may be regulated in the constitution are the financial system, apportion of tax revenue and budget management. It may impact the regulation of taxes and fees

to be collected under the warehouse receipt legislation. Finally, the rules for legislative procedures that are typically determined in the constitution are also relevant for enacting new or reforming existing legislation. Overall, to ensure the constitutionality of new legislation, it is crucial to identify the constitutional parameters prior to drafting.

Other national legislation. In addition to the constitution, various other national legislation may be relevant for a warehouse receipt system. First, any existing provisions or laws on warehousing or warehouse receipts need to be examined. These may be found in general legislation such as the civil or commercial code, or in sector-specific laws. The provisions concerning each of the core elements of warehouse receipt legislation – presented in the following sections – should be assessed to identify any weaknesses or gaps and to eventually present options for improvement.

Besides specific warehouse receipt legislation, other legal provisions that do not address warehouse receipts may affect their system. The legislative review should include the civil code, in particular contract law, the provisions for the transfer of ownership and the provisions for pledges. The provisions for the transfer of ownership can be important, for example when determining whether the transfer of a warehouse receipt through endorsement can be considered as a transfer of ownership of stored goods. The provisions for pledges may provide the parameters for designing the provisions on a pledge certificate in the new warehouse receipt legislation. Furthermore, for the introduction of electronic warehouse receipts, existing legislation on electronic transactions and electronic signatures is relevant. It may contain definitions and concepts of electronic documents of title, with which those for electronic warehouse receipts should be harmonized.

The law on enforcement proceedings is relevant for designing the provisions on execution and priority ranking for warehouse receipt holders in case of debtor default. Tort law, or the criminal code, is relevant to the provisions of offences and penalties under warehouse receipt legislation.

The commercial code, the law on certificates, insurance laws, laws on negotiable instruments, laws on exchanges, banking law and insolvency laws are also relevant for a warehouse receipt system's design. Other legislation such as that on industrial safety may be relevant depending on the legal framework of a given country.

Within the legislative assessment, it should be determined how those provisions bind or affect the drafting or reform of warehouse receipt legislation. For example, the possibilities of designing the provisions on execution or priority of obligations may be limited through the procedural code. It may become necessary to determine whether the warehouse receipt legislation may derogate from other legislation.

Implementation. In addition to analysing existing legislation, it is important to assess the actual capacities and resources for implementing new warehouse receipt legislation to ensure that it is suitable. This includes the available public resources that can be devoted to the licensing and oversight process for warehouses and the registration of warehouse receipts. For example, either an existing entity must be tasked with implementing the new law or a new entity may be created as a regulatory authority. Where government entities do not have the necessary resources, it can be considered whether private-sector entities such as trade associations may be tasked with the oversight of warehouses or other tasks under the supervision of the regulatory authority.⁴⁴

The judicial system may already be charged to capacity, and the actual court procedures for enforcement may be considered very time consuming. This may influence the design of the enforcement provisions of a warehouse receipt law as the provision of out-of-court enforcement possibilities for creditors may then be advisable.

Forms of warehouse receipt legislation

The form of warehouse receipt legislation varies between countries. But there are three basic legislative approaches: first, the basic provisions of the warehouse receipt system may be contained in one comprehensive warehouse receipt system law. Second, the provisions on warehousing and those on warehouse receipts may be separated into two different laws. Or third, these provisions may be integrated into a broader, general law not enacted to specifically regulate the warehouse receipt system, such as a commercial or civil code, or a sector-reform act. Countries may also combine these approaches when regulating certain commodities separately. The majority of the reviewed countries tend towards the first approach.

Whatever form chosen, other provisions of a country's general legislation may be applicable and complementary, such as contract law, company laws, commercial law, law on civil procedure and execution of obligations, insurance law, insolvency law and tort law. Furthermore, the provisions of the primary law are typically complemented by implementing regulations or other secondary legislation. Depending on the country's legal tradition and the requirements of the sector, there may be many, detailed implementing texts.

One specific law for the warehouse receipt system

All basic provisions for warehousing and warehouse receipts can be contained in one comprehensive specific act regulating the warehouse receipt system for agricultural and other commodities. Out of the countries reviewed in Part III, this regulatory approach has been followed by Argentina, Brazil, India, the Philippines, Tanzania, Turkey, Uganda and the United States of America. Most countries following this approach have introduced the

⁴⁴ See Giovannucci, Varangis & Larson, 2000, p. 2.

legislation recently, except for Argentina,⁴⁵ the United States⁴⁶ and the Philippines.

The recent trend across Africa has been to enact specific comprehensive legislation covering both warehouse receipts and warehouse regulation. Several African countries have enacted specific warehouse receipt system legislation within the last ten years. In 2003 Ethiopia enacted a special law for governing the warehouse receipt system, followed by Tanzania in 2005, Uganda in 2006 and Zambia in 2010.⁴⁷ Because these systems in Africa have mostly been introduced for the first time, they include most or all components in one piece of new legislation.

Additionally, countries may promulgate subsector-specific laws or regulations that complement the warehouse receipt system law. In the Philippines, specific laws on warehouse receipts for all storable goods and on warehousing of agricultural commodities were enacted in 1912 and 1932 respectively.⁴⁸ Additionally, a specific law on grain warehouses and grain warehouse receipts was passed in 1972.⁴⁹ This special attention of the legislator to the warehouse receipt system for grain is because grain is very important to the country. Tanzania also enacted legislation governing strategic crop-specific subsectors. Here, the first specific law on a warehouse receipt system for agricultural commodities was

passed in 2005.⁵⁰ Acts for cashew nuts, cereals and other produce were enacted in 2009;⁵¹ they regulate, among others, specific requirements for the warehousing of those commodities.

Countries introducing new legislation on warehouse receipts often prefer to enact a new specific law for several reasons. First, an amendment of the long established commercial or civil code can be more difficult to agree upon in the parliamentary process. Second, a new single law can be easier to amend later if needed. Finally, a new specific law that contains all warehouse receipt-specific provisions in one place has more visibility and clarity. This makes its interpretation easier and more predictable, which, in turn, increases the attractiveness of the system for its potential users, particularly creditors.

Separate laws for warehouses and warehouse receipts

Another option is to regulate warehousing and warehouse receipts in separate laws. For example in Brazil, a law regulating warehouse requirements was enacted in 2000 and in 2004 a separate law on agricultural warehouse receipts.⁵² And for the regulation of warehouses, there is a more general law applicable to all warehouses.⁵³ In the Philippines, relevant provisions can be found in the Warehouse Receipts Act of 1912 for all storable goods, and in the Bonded Warehouse Act of 1932 for warehousing of agricultural commodities. In the United States of America at the state level, warehouse regulation is separated from the Uniform Commercial Code, which contains a section on documents of title with provisions on warehouse receipts for any movable goods.⁵⁴

The regulation of warehousing and warehouse receipts in separate laws may be due to that the

⁴⁵ In 1914, Argentina enacted a specific law regulating warehousing and warehouse receipts for fruits or agricultural products, livestock, forestry, mining or domestic manufactures (see Ley 9643 de 30.09.1914, BORA 6257, 20 Nov. 1914). However, the National Commercial Code prescribes several major obligations for warehouse keepers (see Art. 31, Ley 9643; Arts. 123-131, Comm. Code, 1889, as amended).

⁴⁶ In the US, at the federal level, a specific act regulates both warehousing and warehouse receipts for agricultural products (United States Warehouse Act, 2000, codified at 7 U.S.C. §§ 241-256). Enacted in 1916 and revised in 2000, this act applies only to federally licensed warehouses according to a voluntary participation model.

⁴⁷ Proclamation No. 372/2003. Proclamation to Provide for a Warehouse Receipt System, 2003. The Proclamation replaces Articles 2806-2824 of the Civil Code of Ethiopia, 1960. Ethiopia; Sec. 2 Warehouse Receipts Act, 2005. Tanzania; Warehouse Receipt System Act, 2006. Uganda; Agricultural Credits Bill No. 35 of 2010. Zambia.

⁴⁸ Warehouse Receipts Act, Act 2137, 1912; Bonded Warehouse Act, Act 3893, 1932. The 1932 Bonded Warehouse Act originally applied to warehouses for rice; it was amended in 1948 by Republic Act No. 247 to substitute the term "commodity" for "rice," to expand its scope (S. 1 Republic Act No. 247, 1948). See World Bank, 2005, Appendix 1, Part II. The Philippines.

⁴⁹ See Sec. 12-15, Presidential Decree 4, 1972, as amended. The Philippines.

⁵⁰ Sec. 2 Warehouse Receipts Act (2005). Tanzania.

⁵¹ The Cashew Nut Industry Act, 2009; The Cereals and Other Produce Act, 2009. Tanzania.

⁵² Law 9973 of 29 May 2000, Providing for the storage system of agricultural products; Law 11076 of 30 December 2004, Providing for the CDA, WA, CDCA and LCA, and CRA. Brazil.

⁵³ Decree 1102 of 21 November 1903, Establishing rules for the establishment of general warehouses and determining the rights and obligations of these companies. Brazil.

⁵⁴ Drafted in 1951, with major revisions in 2003. See U.C.C. 7-102(7) and 7-201. US.

legislative powers for two fields are designated to different authorities – for example, to the federation and single states in federal state systems. The advantages of this approach may be that, for example, the warehousing legislation can include more commodities in its scope while the law on warehouse receipts may restrict its applicability to a smaller circle of commodities.

Regulation of warehouse receipt systems in general legislation

Countries that have not enacted specific warehouse receipt legislation often regulate warehouse receipts through general commercial or civil codes, or a general law on grain. This approach is followed by fewer countries, such as France, Kazakhstan and Ukraine.

For example, the commercial code may contain a specific chapter on warehouses and warehouse receipts and warrants, like in France.⁵⁵ A similar approach is followed by Kazakhstan and Ukraine. Here, the legislation provides for two parallel warehouse receipt systems. Provisions on warehouse receipts for commodities in general are contained in general legislation. However, both countries passed warehouse receipt system provisions for grain in a general grain law regulating various aspects of this sector.⁵⁶

In both Kazakhstan and Ukraine grain is highly important within the agricultural sector. This importance prompted legislators to pay attention to the grain sector. The warehouse receipt system in these countries was introduced as part of an overall reform of the grain sector. Furthermore, reciprocal influences between Kazakhstan and Ukraine may contribute to

similarities of the legislator approach: both countries introduced the new legislation during the same time period (Kazakhstan in 2001, Ukraine in 2002), are located in the same region and are well-informed of the other country's legislative reforms.

In both countries, the inclusion of a specific regulatory framework for grain warehouse receipts proved to be a positive step for the grain sector.⁵⁷ One observation of this approach is that though the system is only serving the grain subsector it could be beneficiary to other subsectors too. This has been experienced in both Kazakhstan and Ukraine. Ukraine has subsequently expanded much of the framework for warehouse receipts – except some key elements such as the grain warehouse receipt guarantee fund – created by the Law on Grain to include all commodities.⁵⁸ However, in both countries the use of warehouse receipts for other commodities remained limited compared with grain warehouse receipts, which may be attributed to the exclusion of some key elements, particularly performance guarantees.

Core elements of warehouse receipt legislation

Legal frameworks governing a warehouse receipt system should regulate the core features listed in Box 1. This section explains, compares and analyses the spectrum of options for regulating these key elements of warehouse receipt legislation based on country experiences. It identifies good regulatory practices that have proved to be effective for accommodating the specific needs and challenges of countries, as well as some of their potential failures.

Scope and definitions

Legislation should determine its scope of application, particularly for which goods warehouses may issue receipts. Numerous factors influence the decision of what goods may or may not be the subject of warehouse

⁵⁵ Art. L522 C. comm. of France has provisions regulating operation, authorization and oversight of all general warehouses – where manufacturers, traders, farmers or craftsmen store raw material, merchandise, foodstuffs or manufactured products – that issues negotiable security notes. It regulates issuing receipts and warrants by those establishments.

⁵⁶ In Kazakhstan, provisions for warehouse receipts and warehouse obligations without limitation to specific commodities are contained in the Civil Code, Arts. 797-802. Legislation for grain warehouse receipts was enacted in 2001 by the Law on Grain, which regulates several aspects of the grain sector, including the grain warehouse receipt system. In Ukraine, the broad framework for warehouse receipts is in the 2004 Law on Certificates and the Civil Code (Arts. 936-66, Civil Code). In 2002, the Law on Grain was enacted, containing the key legal provisions for the regulation of grain warehouses and grain warehouse receipts.

⁵⁷ See for Kazakhstan e.g. OECD, 2013, p. 145. See also, Zhazykbayeva, 2012.

⁵⁸ It was expanded to cover all commodities by including sections in the Civil Code (see Arts. 936-66) and the Law on Certified Commodity Warehouses and Simple and Double Warehouse Certificates. Ukraine.

Box 1: Core legal elements for warehouse receipt legislation

Warehouse receipt legislation should regulate:

- scope and definitions
- administration
- licensing and oversight of warehouses
- performance guarantees for warehouses
- contractual rights and obligations of the parties
- warehouse receipts: legal status, format, details, form and registration
- negotiation and transfer of warehouse receipts
- settlement and release of stored goods
- execution and priority of obligations
- offences and penalties

receipts. One consideration for the legislator can be the importance of a specific subsector or commodity for the country. Another may be the limits of currently available warehouse infrastructure, such as the cold chain for the storage of fruits and vegetables. And yet another important consideration is the administrative and institutional costs that derive from strictly regulating many types of commodity warehouses. For example, if a country chooses to only focus on regulating grain warehouses, it will have to continually inspect and oversee X warehouses. But, if warehouses that store all kinds of goods must be inspected, then the oversight institution will have to monitor 10X warehouses and maintain qualified technical staff to inspect this diverse range of warehouse businesses. If the goal is to strictly regulate a warehouse receipt system, the associated administrative burden is a major concern and a possible reason for limiting the scope to a high importance sector, especially in the early stages of implementation.

For the countries reviewed in Part III of this study, there are three rough approaches to possible subjects of warehouse receipts:

- all storable goods/commodities
- agricultural commodities
- specific commodities only

In the first approach, legislation broadly regulates warehousing and warehouse receipts for commodities or goods in general, including agricultural commodities.⁵⁹ In the second, it more restrictively regulates warehousing and issuing warehouse receipts for agricultural commodities only.⁶⁰ Lastly and most restrictively, legislation regulates warehousing and warehouse receipts only for a particular agricultural commodity – most commonly grain. This last approach can be implemented by a sector-specific law, for example a law on grain, that is complemented by the general provisions on warehousing of other commodities based on the civil code or other legislation.⁶¹ Some laws leave – with respect to the commodities they cover – some flexibility in implementation by the regulatory authority by enabling the authority to determine the particular goods to be covered.

Warehouse receipts for commodities or goods in general. Some countries regulate warehousing and warehouse receipts for all storable commodities or goods (including agricultural commodities) in general legislation such as the commercial or pledge laws, without providing for specific receipts for agricultural commodities.

This approach is more common in countries with a long-established legal framework for warehouse receipts. For example, in France, general warehouses may issue warehouse receipts and warrants under the commercial code for stored raw material, merchandise, foodstuffs or manufactured products.⁶² In Argentina, the Warrant Law of 1914 allows certificates of deposit and warrants to be issued for agricultural products, livestock, timber or mined goods.⁶³ At the state level in the United States of America, the Uniform Commercial Code (UCC) similarly proposes that warehouse receipts be issued for any movable goods.⁶⁴ On the other hand, Indonesia, which enacted its warehouse receipt system law in 2006, allows warehouse receipts

⁵⁹ In France, Argentina, Uganda, Indonesia, India.

⁶⁰ In Turkey, Tanzania.

⁶¹ In Ukraine, Kazakhstan, the Philippines.

⁶² See Art. L522-1, C. comm. France.

⁶³ See Arts. 1-2, Ley 9643. Argentina.

⁶⁴ See U.C.C. 7-102(7) and 7-201. US.

to be issued for any movable goods that can be stored for a period of over three months and traded.⁶⁵

A country can introduce a warehouse receipt system open to all commodities but initially restrict its application and the issuance of warehouse receipts to a particular subsector or a limited set of commodities. A possible reason for this is that certain subsectors are not yet considered sufficiently developed or having adequate infrastructure. Or a country might want to pilot and introduce the system successfully first in one sector, to build on a pre-existing structure, and then extend it to others. There might also be the need to train warehouse personnel, farmers and/or personnel of the regulatory and oversight authorities, which is easier if the focus is first put on a limited subsector of agricultural produce. The same country could want, at a later time, its circle of commodities easily extended to other commodities without amending the primary law or enacting a new one, which would need to pass through the often time-consuming and cumbersome parliamentary legislative process.

In this regard, it can be a practical solution to determine in the parliamentary-level law that warehouse receipts may be issued for commodities in general and empower the regulatory authority to determine by way of subsidiary regulations the particular commodities that receipts may be issued for. This approach gives flexibility to the regulatory authority to determine – according to the circumstances – which commodities or subsectors should be included under the system. India is a good example of this legislative approach. In India, the Warehousing Act states that generally negotiable warehouse receipts can be issued for agricultural or other commodities and mandates that the regulatory authority specifies which commodities receipts will be issued for. The authority initially focused on agricultural commodities:⁶⁶ 115 agricultural commodities and 26 horticulture commodities.⁶⁷ A similar regulatory technique

was applied in Uganda. Its recent Warehouse Receipt System Act allows warehouse receipts to be issued for goods in general,⁶⁸ and its implementing regulations have initially restricted its application to agricultural commodities, which will be extended to other goods by the minister responsible for trade upon recommendation of the regulatory authority of the warehouse receipt system.⁶⁹

Warehouse receipts for agricultural commodities. Next, with a narrower focus, countries can regulate warehousing and warehouse receipts for agricultural commodities in a warehouse receipt law, separately from other commodities. The definitions of an agricultural commodity or product determine what receipt will be issued.

Several countries have taken this approach. Within the federal (voluntary) scheme in the United States of America under the United States Warehouse Act (USWA), warehouse receipts may be issued for agricultural products defined by Department of Agriculture regulations⁷⁰ as an “agriculturally-produced product stored or handled for the purposes of interstate or foreign commerce, including a processed product of such agricultural product, as determined by [the oversight institution]”.⁷¹ Under Turkish legislation warehouse receipts may be issued under Article 3(d) of the Licenced Warehousing Law for agricultural products defined as cereals, pulses, cotton, tobacco, nuts, oilseeds, vegetable oils and other basic and processed products that can be standardized, such as sugar.

The legislator can leave to the executive authority the possibility to modify the set of products for which warehouse receipts may be issued. This can be achieved by enabling the executive authority to subsequently determine

⁶⁵ See Arts. 1 No. 2, 5 and 6, Law No. 9, 2006. Indonesia.

⁶⁶ Misra, 2011.

⁶⁷ WDRA, List of Notified Commodities. India.

⁶⁸ Goods are defined as “all things which are treated as movable for the purposes of a contract of storage or bailment, including, in the case of goods to be packed, processed, substituted or otherwise transformed in the warehouse, their products, and includes documents, securities and instruments.” Sec. 2 Warehouse Receipt System Act, 2006. Uganda.

⁶⁹ Sec. 2(3), Warehouse Receipt System Regulations, 2007. Uganda.

⁷⁰ 7 U.S.C. §242(b). US.

⁷¹ 7 C.F.R. 735.3. US.

commodities for inclusion through subsidiary legal instruments. For example, Tanzania followed this approach. The Tanzanian Warehouse Receipts Act in Section 2 and 3 determines that warehouse receipts may be issued for all agricultural commodities, as well as for other goods that the minister responsible for marketing of agricultural commodities declares.

Sector-specific warehouse receipts. Lastly, other countries enact separate warehouse receipt legislation for a specific commodity, such as grain, cashew nuts or sugar. In this case, there could be two parallel, partly harmonized systems, one for a particular commodity and another for other commodities. In this approach a country's regulatory and economic resources can be concentrated on its strategic commodities. The law could be enacted in the course of a sector reform, and the provisions on sector warehousing and warehouse receipts be placed in the more general law that also regulates other aspects of the sector. This approach has been followed by Kazakhstan and Ukraine – in both countries the grain subsector is highly important.

In Kazakhstan, warehouse receipts may be issued for grain or other commodities. Warehouse receipts for grain are governed by the Law on Grain, which defines grain as the fruits of cereal, legume and oilseed crops used for food, seed, feed or industrial purposes.⁷² Warehouse receipts for other commodities fall under the broader provisions for warehouse receipts of the Civil Code.⁷³

In Ukraine, warehouse receipts are issued for grain and all other commodities, while warehouse receipts for grain fall under the Law on Grain, which legally defines grain in Article 1(11) as “the fruit of grain, leguminous, and oil-yielding crops used for the food, seed, fodder and technical purposes”. Warehouse receipts for other commodities are issued under the 2004 Law on Certificates, which allows a warehouse to issue receipts for any stored commodity that it has been licenced for.⁷⁴ Today, large parts of the grain

warehouse receipt system have been opened to other commodities through subsequent sections in the Civil Code of Ukraine and the Law on Certificates.⁷⁵ For both Kazakhstan and Ukraine, this approach has been successful for the grain sector as warehouse receipts are widely and primarily used for grain.

Another approach to regulating grain separately while including other commodities in the specific warehouse receipt law is to enact a specific act on warehouse receipts, under which receipts may be issued for all storable goods, and another specific act with additional provisions for grain. An example for this approach is in the Philippines where under the 1912 Warehouse Receipts Act all storable goods can be subject to a warehouse receipt.⁷⁶ Specific requirements for grain warehouse receipts are determined in the National Food Authority (NFA) Act⁷⁷ and its supporting regulations.⁷⁸ Additionally, this act allows the implementing authority to add or remove “raw/fresh and/or manufactured/processed/packaged food products” from the scope of its regulations.⁷⁹

Administration

To ensure the effective long-term implementation of a warehouse receipt system, one of the most important factors is that the institutional structure is tailored to meet the specific needs of a country's system and its available resources. Whether reforming an existing legal framework or introducing a new system, the first step is to identify hypothetical needs based on the legislation components to be included and the expected system scale derived from market analyses.

For each component to be included in the legal framework – such as a central government registry of licenced warehouses or the licensing of new types of warehouses – the administrative

⁷² See Art. 1(8), Law on Grain. Kazakhstan.

⁷³ See Arts. 797-802, Civil Code. Kazakhstan.

⁷⁴ See Art. 9, Law on certificated commodity warehouses, 2004. Ukraine.

⁷⁵ See Arts. 936-966, Civil Code. Ukraine.

⁷⁶ Goods are defined as chattels or merchandise in storage or those that have been or are about to be stored. Sec. 58, Warehouse Receipts Act, 1912. The Philippines.

⁷⁷ See Sec. 12-15, Presidential Decree 4, 1972, as amended. The Philippines.

⁷⁸ Sec. 85 Reg. I, Revised Rules and Regulations of the National Food Authority on Grains Business, 2006. The Philippines.

⁷⁹ See Sec. 4-5 Presidential Decree 1770, 1981. The Philippines.

costs and required technical capabilities to implement the component must be assessed in light of the expected size of the system. Legislative drafters should also assess the capabilities of existing bodies (public or private) to see if they are capable of fulfilling the needs of the system. It could be that responsibilities for various components are split among several different institutions, that new responsibilities and capabilities must be added to existing institutions or that an entirely new institution must be created in order to comprehensively oversee the new or reformed warehouse receipt system.

Legislation typically sets out several core aspects related to the institutional structure overseeing the warehouse receipt system. The legislation determines the primary competent authority (or authorities) in charge of the system and defines its powers and responsibilities. It is important that mandates to oversee all components of the warehouse receipt system be allocated to designated authorities and that these authorities have sufficient powers to carry out their duties. Particularly if the primary authority is newly established, legislation also contains detailed provisions on institution structure, funding levels and sources and operational rules.

Competent authority. Legislation may vest the regulatory and oversight powers for the warehouse receipt system in one or more state authorities. At a conceptual level, choosing a single, consolidated oversight authority can reduce overlaps, ensure consistency of implementation and increase outcome certainties for the warehouse receipt system actors. Yet, the institutional structure strongly depends on the traditions and general constitutional and institutional framework in a given country.

For example, in a federal state system, various legislative, executive and judicial powers may be assigned to either the federal or state level, or both. The vertical institutional structure can include several steps from the local level up to a centralized authority. The majority of countries place the primary authority on the ministry or department in charge of agriculture; other

countries designate the ministry in charge of trade or industrial and commercial affairs. In some countries, more than one ministry is responsible for certain aspects of the system. The designation of the competent ministry commonly depends on the pre-existing constitutional distribution of executive powers between ministries.

Several countries have placed the regulatory and oversight powers for the warehouse receipt system in the ministry or department in charge of agriculture, like the United States of America, Argentina, Kazakhstan and Ukraine. For example in the United States, the institutional responsibilities under the United States Warehouse Act (USWA) are centralized in a single agency⁸⁰ under the United States Department of Agriculture (USDA).⁸¹ Similarly in Argentina, the designated oversight and implementation authority for the agricultural warehousing and warehouse receipt system is the Ministry of Agriculture, Livestock and Fisheries.⁸²

Kazakhstan and Ukraine have put in place very similar institutional structures based within their respective ministries in charge of agriculture. In Kazakhstan, the Ministry of Agriculture has the primary oversight and licensing responsibilities for grain warehouses and receipts.⁸³ The Law on Grain Article 24-1 created a State Grain Inspector within this ministry, who delegates responsibilities to local executive authorities. These local authorities are responsible for grain warehouse inspection and for verifying their compliance with applicable regulations.⁸⁴ Similarly in Ukraine, the Ministry of Agrarian Policy and Food is the primary oversight institution for the

⁸⁰ Deputy Administrator for Commodity Operations of the Farm Service Agency, 7 C.F.R. 735.2(a). US.

⁸¹ The USDA has exclusive power, jurisdiction and authority to apply the USWA on federally licenced warehouse operators and any person claiming under the act an interest in an agricultural product based on a document or issued receipt. Among others, the USDA can licence and inspect warehouses and prescribe warehouse operators' duties. See generally, 7 U.S.C. §242. US.

⁸² The Ministry has the power to authorize warehouses, inspect warehouses, revoke authorization in case of violations and determine the classification system for goods that can be deposited in authorized warehouses and covered by certificates of deposit and warrants. See Arts. 2, 24 and 30, Ley 9643. Argentina.

⁸³ See Arts. 1(26) and 6, Law on Grain. Kazakhstan.

⁸⁴ See *ibid.*, Arts. 24 and 24-1. See also, Sec. 1(2), Regulations on approval of rules for licensing, 2007. Kazakhstan.

grain warehouse receipt system. Within the ministry, the State Agriculture Inspectorate is the designated competent entity.⁸⁵ The Inspectorate may delegate grain warehouse inspection functions to local authorities.⁸⁶ Furthermore, the State Registrar within the ministry maintains a centralized registry for grain warehouse receipts.⁸⁷

In Turkey, the Ministry of Science, Industry and Technology is the designated licensing and oversight institution for the warehouse receipt system.⁸⁸ Similarly in France, the minister in charge of industry is responsible for approving standard regulations that are prepared by the National Federation of Logistics Providers and authorized general warehouses,⁸⁹ while the Council of State issues the implementing decrees on warehouse operation.⁹⁰ At the local level, the local prefect is responsible for authorizing general warehouses.⁹¹ Oversight authorities are the local prefects and the General Inspectorate of Industry and Trade; they monitor the activities of authorized general warehouses and control the regularity of their operations, including audits and investigations.⁹²

In other countries, several authorities have responsibilities. For example in Brazil, the primary oversight institution for agricultural warehouses is the national Ministry of Agriculture, Livestock and Food Supply. The ministry regulates agricultural warehouses and their certification, inspects them for compliance and imposes penalties for non-compliance.⁹³ The registration of agricultural warehouses is maintained by the National Supply Company, a government entity within the ministry.⁹⁴ Additional mandates are placed on two bodies outside the ministry: The National

Institute of Metrology, Quality and Technology certifies private-service providers to serve as the ministry's compliance inspectors, and the Central Bank of Brazil is responsible for maintaining the central registration system for agricultural warehouse receipts (Agricultural Certificate of Deposit [CDA] and Agricultural Warrant [WA]).⁹⁵

The institutional framework in the Philippines is more complex; it includes multiple actors vested with primary responsibilities for different aspects of the warehouse receipt system. While the Department of Trade and Industry licences commodity warehouses under the general framework of the Bonded Warehouse Act, other regulatory and oversight responsibilities for grain warehouses are placed with different entities within the Department of Agriculture. The National Food Authority (NFA) sets up a system for grain warehouse receipts and registers, licences and supervises warehouses.⁹⁶

In the quedan warehouse receipt system of the Philippines, the NFA may promulgate policies and/or restrictions for guaranteeing its integrity and promoting its use. The Agricultural Credit Policy Council within the Department of Agriculture assesses and synchronizes agricultural credit policies.⁹⁷ The regulation of sugar warehouse receipts is entrusted to the Sugar Regulatory Administration (SRA)⁹⁸ within the Department of Agriculture. Lastly, also within the Department of Agriculture is the Quedan and Rural Credit Guarantee Corporation (Quedancor), created to set up the quedan guarantee system.⁹⁹ Quedancor's powers include implementing guarantee systems to promote financing, issuing and enforcing rules for participating franchised warehouses, providing special warehouse receipts for quedan guarantees and creating

⁸⁵ See Art. 2, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine.

⁸⁶ See *ibid.*, Arts. 6-13.

⁸⁷ Decision on ensuring the implementation of the Law on Grain, 2004. Ukraine.

⁸⁸ See Arts. 3(a), 8, Law on Licenced Warehousing, 2005. Turkey.

⁸⁹ Art. R522-13, C. comm. France.

⁹⁰ *Ibid.*, Art. L522-12 et seq.

⁹¹ *Ibid.*, Art. L522-1.

⁹² *Ibid.*, Arts. R522-17 and R522-19.

⁹³ See Arts. 10-14, Law 9973, 2000. Brazil.

⁹⁴ Annex I Art. 1, Instruction 33, 2007; Art. 42, Law 8171, 1991. Brazil.

⁹⁵ See Annex II Arts. 4.9 and 8, Instruction 33, 2007; Art. 15, Law 11076, 2004. Brazil.

⁹⁶ Sec. 6(a), Presidential Decree 4, 1972. The Philippines.

⁹⁷ Agricultural Credit Policy Council: www.acpc.gov.ph/; Sec. 19(a)(1), Executive Order 116, 1987; Sec. 5, Executive Order 113, 1986; Sec. 21, Republic Act No. 7607, 1992. The Philippines.

⁹⁸ The SRA has the power to "institute, implement and regulate an orderly system of queddanning, disposition and withdrawals of various forms of sugar from warehouses" Sec. 3(e), Executive Order 18, 1986.

⁹⁹ Department of Agriculture, Attached Agencies and Corporations, available at www.da.gov.ph/.

the accreditation for participants in the quedan guarantee system.¹⁰⁰

In India, there is a pronounced hierarchical structure where different actors are entrusted with implementing the system and one authority has the major implementation responsibilities. This authority is the Warehousing Development and Regulatory Authority (WDRA), created under the Ministry of Consumer Affairs, Food and Public Distribution. Though the highest authority actually lies with the Central Government. The regulatory powers for the system are distributed to both the authority and the Central Government, though the authority needs previous approval of the Central Government to make regulations to implement the Warehousing Act.¹⁰¹ Accreditation agencies in the private and public sector registered by the authority are responsible for accrediting, examining and inspecting warehouses before the authority registers them to issue negotiable warehouse receipts.¹⁰²

Another example of an extensive system of institutions to provide oversight and regulation is the Indonesian Warehouse Receipt Law. In it, the primary responsibility lies with the Ministry of Trade that is tasked with implementing the law through the Commodity Exchange Regulatory Commission. Under the Ministry of Trade, a Supervisory Board was created. It guides, regulates and supervises activities related to the warehouse receipt system, and it is authorized to grant approval for issuing warehouse receipt derivatives, carry out technical warehouse inspections, order examination and investigation of suspected violations of the Warehouse Receipt Law, among others.¹⁰³ The Supervisory Board approved the Warehouse Receipt Central Register, a business corporation, for administering warehouse receipts and warehouse receipt derivatives, such as records, transfer of ownership, imposition of security rights and an information system network.¹⁰⁴

Activities related to assessing or proving the fulfilment of requirements relating to products, processes, systems and/or personnel are assigned to the Compliance Evaluation Agency and approved by the Supervisory Board.¹⁰⁵

Furthermore, Indonesia places responsibilities on the regional and central governments. The Central Government is responsible for formulating national policies relating to the warehouse receipt system; developing commodity standards; providing facilities for cooperatives, for small- and medium-scale businesses and to the farmers in the warehouse receipt system; and fortifying the warehouse receipt system institutions and infrastructure, particularly the finance and commodity auction market sector.¹⁰⁶ On the other hand, the Regional Government is involved in formulating regional policies to accelerate the implementation of the warehouse receipt system; developing superior commodities in the region; and facilitating the development of a commodity auction market.¹⁰⁷

It should be noted that, under the supervisory authority of the primary competent state authority, legislation may also provide for some form of self-regulation of the sector, where a private-sector entity assumes certain regulatory and implementation duties.¹⁰⁸ For example, a private-sector entity may be a self-regulatory organization of warehousing operators. Depending on the country's legal system, legislation can vest it with some regulatory and oversight powers, such as establishing business rules and standards for warehouses that are binding on its members; monitoring the business operation of its member warehouses for compliance with these rules and standards; carrying out training and information activities; and others. It is important that this entity can ensure that it can carry out the functions entrusted to it.

¹⁰⁰ Sec. 2, 4 and 11, Republic Act No. 7393, 1992. The Philippines.

¹⁰¹ Sec. 50, Warehousing Act, 2007. India.

¹⁰² See the homepage of the WDRA, Annual Reports. India.

¹⁰³ Arts. 20 and 21, Law No. 9, Warehouse Receipt System, 2006. Indonesia.

¹⁰⁴ Art. 1(13), Law No. 9, 2011. Indonesia.

¹⁰⁵ Arts. 28 and 1 No. 12, Law No. 9, 2006. Indonesia.

¹⁰⁶ Art. 5, Law No. 9, 2011 (amending Art. 32). Indonesia.

¹⁰⁷ Ibid., Art. 6 (amending Art. 33). Indonesia.

¹⁰⁸ FAO, 2009, pp. 29, 30.

Public-private board or entity. In some countries, warehouse receipt legislation sets up a mixed board or entity that comprises both public- and private-sector representatives. Bringing together all relevant actors in the warehouse receipt system's implementation can ensure that all stakeholder concerns are taken into account in its implementation and governance. The relevant stakeholders in the warehouse receipt system may include farmers and their organizations, cooperative societies, banks, insurance agencies and the warehouse operators' associations or organizations, as well as the ministries in charge of agriculture, industry and trade. The warehouse receipt system legislation defines the powers and functions of such a mixed entity. It may be entrusted with executive functions such as licensing or with purely advisory functions.

Uganda provides a recent example of an entity with executive powers composed of both public- and private-sector representatives. The Act of 2006 established a new authority comprising both public- and private-sector representatives as the regulatory and oversight body: the Uganda Warehouse Receipt System Authority.¹⁰⁹ The funds of this authority consist of those appropriated by the parliament; received by the authority from issuing, inspecting and supervising warehouse licences; derived from the sale of warehouse books; and any other funds, and any other funds the authority may receive or borrow for performing its functions.¹¹⁰ The authority's Board of Directors consists of stakeholder representatives from private and public sectors: one representative from the ministry responsible for trade, the Uganda Clearing and Forwarding Agents Association, the Uganda Bankers Association, the Uganda Insurers Association, the Uganda National Chamber of Commerce and Industry, cooperatives, the private sector and the farmers.¹¹¹

Very similarly in Tanzania, the act introducing the warehouse receipt system in 2005 established a mixed corporate body in charge of licensing and

inspecting warehouses: the Tanzania Warehouse Licensing Board.¹¹² The act prescribes its internal structure, financing and composition. Accordingly, the board is comprised of representatives of the public and private sector.¹¹³ The regulatory power to issue the implementing regulations under the act, however, is given to the minister responsible for marketing of agricultural commodities, who may in turn entrust the board with additional functions.¹¹⁴

An example of private-sector participation in form of a purely advisory committee is the Indian legislation. The committee's functions are limited to advising the regulatory and oversight authority on technical matters and making recommendations for implementing the Warehousing Act.¹¹⁵

Licensing and oversight of warehouses

There are different types of warehouses. A private warehouse is part of a company's overall operations that may include manufacture, wholesale or retail of the stored commodities. In contrast, a public warehouse is a storage place operated by a warehouse operator for storing a third person's commodities for a fee.¹¹⁶ Public warehouses have various benefits. They can store commodities for producers who do not have adequate storage facilities. They issue warehouse receipts that banks or other credit providers can accept as collateral for credit. And the warehouses provide postharvest handling of commodities, including independent grading and quality certification, which in turn can improve overall commodity quality standards.¹¹⁷

¹⁰⁹ Sec. 3 and 6, Warehouse Receipt System Act, 2006; Sec. 6 Warehouse Receipt System Regulations, 2007. Uganda.

¹¹⁰ Sec. 16, Warehouse Receipt System Act, 2006. Uganda.

¹¹¹ Ibid., Sec. 7.

¹¹² Sec. 4–6, Warehouse Receipts Act, 2005. Tanzania.

¹¹³ The board shall include a representative of the ministry responsible for crop marketing, two representatives of the cooperative societies and one representative from the organization of Tanzania private farmers, the Tanzania Bankers Association, the Tanzania Insurers Association, the farmers and the warehouse operator's association or organization. Sec. 1(2) Schedule to the Warehouse Receipts Act, 2005. Tanzania.

¹¹⁴ Sec. 79, Warehouse Receipts Act, 2005. Tanzania.

¹¹⁵ The committee members represent the interest of various stakeholders, namely commerce, industry, engineering, agriculture, consumers, organizations engaging in warehousing, quality control, preservation and research entities. Sec. 34, Warehousing Act, 2007. India.

¹¹⁶ FAO, 2009, p. 7.

¹¹⁷ For the benefits of public warehouses see *ibid.*, p. 8.

However, depositors and creditors will use public warehouses and warehouse receipts only if they have confidence in the warehousing operation. The depositor must have confidence that the commodity is accurately weighed and graded. Depositors and creditors must be confident that the commodities are safely stored in adequate facilities by qualified personnel and that the commodities received fulfil all specifications recorded in the receipt. Risks for creditors and depositors related to the warehouse operation, such as damage of the stored commodity or fraud, can be minimized by regulating the organization and operation of warehouses through a well-functioning licensing and supervision system.¹¹⁸

Therefore, the primary objective of warehouse licensing and oversight legislation is to control warehouse operations and ensure integrity of the warehouse receipt system. Effective legislation for licensing and supervising warehouses usually consists of several core components. First, legislation will typically introduce the general prohibition against entering the warehousing business without prior permission by the competent authorities. This allows the authorities to control who enters the warehousing market. The warehousing legislation will determine the requirements to enter the market and the criteria for the competent authority to grant, deny, suspend or revoke the permission. Transparency should be assured through registering licenced warehouses and providing public information about licenced warehouses and licensing requirements. Inspections control compliance with licensing requirements and the provisions of the warehouse receipt legislation. In addition to licensing warehouses, the legislation could allow the authority to licence several different actors within the system, such as commodity graders and private warehouse inspectors to carry out official inspection tasks.

The regulation of these elements, as well as the level of detail included in legislation, depend on various factors that include the legislative tradition in a country, the level of development

of rural and warehousing infrastructure, available resources to carry out licensing and inspection, and others.

Obligation to obtain a licence. Legislators subject warehouses to licensing to ensure control over who enters the warehousing market to offer warehousing services and issue (negotiable) receipts. In the primary law most countries require that a person wishing to do so must first obtain permission from the competent authority under the warehouse law. Depending on the general legal tradition in each country, this permission may take the form of a “licence,” a “certificate of registration,” a “certification” or others. (In this study, “licence” is used.) The obligation to obtain a licence must commonly be determined by a parliamentary-level law, as opposed to subsidiary regulations, because it restricts constitutionally guaranteed civil rights by requiring permission before beginning warehousing activity.

The design of the licensing system can be varied to better suit any one of several possible objectives. The government can decide to administer the licensing system directly, including the licensing inspection and control of every warehouse, or to limit their focus to specific activities, commonly the issuance of negotiable warehouse receipts. By only subjecting warehouses that issue negotiable receipts to licensing, legislators signal a clear intent to focus resources on securing the warehouse receipt system.

This is the case in India, where no person may commence or operate a warehousing business – “the business of maintaining warehouses in storage of goods and issuing negotiable warehouse receipts” – without a registration certificate issued under the act.¹¹⁹ However, no registration certificate is required for warehouses not issuing negotiable warehouse receipts. As a variation of this approach, the Philippines has enacted a two-tier licensing system where one level of licensing is required for all operators of grain warehouses, but an additional level

¹¹⁸ See Giovannucci, Varangis, & Larson, 2000, p. 2.

¹¹⁹ Sec. 3(1), Warehousing Act, 2007. India.

(a franchise) is required for grain warehouses seeking to issue negotiable warehouse receipts.¹²⁰

Alternately, the legislator may have a special interest in devoting resources to effectively controlling one commodity or sector strategic for the country's agricultural economy. This approach was taken, for example, in Kazakhstan, where only grain warehouses are required to have licences and not other commodities.¹²¹ Similarly in Ukraine, particular licensing requirements were established for grain warehouses.¹²²

The legislator may also create a specific parallel or voluntary warehouse receipt system with specific participation requirements to make lending against those receipts more secure and to attract more creditors. Accordingly, legislation introduces a specific permission for warehouses to participate in this system. The Philippines provides an example of a voluntary system with extra licensing requirements. The *quedan* guarantee system was introduced as a special voluntary scheme for grain.¹²³ To make lending against the scheme's receipts more secure, the *quedan* guarantee scheme combines the core elements of a warehouse receipt system in addition to those included in the (general) 1932 Bonded Warehouse Act with additional warehouse accreditations, certifications, inspections and third-party guarantees.¹²⁴ In order to participate in the *quedan* guarantee scheme, warehouses must obtain a special accreditation.

Licensing requirements. After instituting the obligation to get a licence, legislators must determine under which conditions a licence will be granted. Most countries include basic licensing requirements in the primary law and leave it to the implementing regulations to determine the details. Defining conditions

should ensure that warehousing facilities and personnel are suitable and qualified for the future warehousing activities and safe storage of deposited goods, as well as that the applicant is qualified to operate a warehouse and provide sufficient guarantees for his or her obligations under warehouse receipt legislation.

The licensing requirements can be grouped in several categories.

- *Infrastructural requirements for warehouse storage.* Legislation should determine the infrastructural requirements to ensure that warehouse facilities can adequately store and handle the commodities for which the licence is requested.¹²⁵ These requirements can concern, among others, the location of the warehouse; local infrastructure; premises security; office facilities; weighing system; sampling system; determination of product quality; cleaning system; drying system; internal transport system; storage system; and ventilation system.¹²⁶ These requirements will need to be further specified by implementing regulations. The required details will partly depend on the country context: the general state of rural infrastructure, the available warehousing infrastructure's degree of sophistication, the commodities being stored, climatic conditions and other factors. For example, the licensing conditions for warehousing of agricultural commodities in Tanzania and Uganda differ from the conditions for grain warehousing in Kazakhstan. For Uganda, and very similarly for Tanzania, regulators specified that physical requirements for warehouses shall *inter alia* include that the warehouse is located in a year-round accessible place; is soundly constructed, fully enclosed and adequately roofed to prevent leakage and access by birds and rodents; has well-maintained

¹²⁰ Sec. 1, Reg. VII, Revised Rules and Regulations of the National Food Authority on Grains Business, 2006. The Philippines.

¹²¹ See Art. 13(2), Law on Grain; see also, Arts. 4(3), 25(2), Law on licensing, 2007. Kazakhstan.

¹²² Art. 11, Law on Grain. Ukraine.

¹²³ See generally, Letter of Instructions No. 704, 1978. The Philippines.

¹²⁴ See Sec. 11, *Quedan and Rural Credit Guarantee Corporation Act*, Republic Act No. 7393, 1992. The Philippines. See also, Rutten, 1999.

¹²⁵ Sometimes referred to as suitability. The US, Tanzania and Uganda require that the warehouse be "suitable" to store the proposed goods. The Tanzanian Warehouse Receipts Act, 2005, requires the "suitability of the warehouse for warehousing the particular goods" (S. 18); the Ugandan Warehouse Receipt System Act, 2006 requires that "the warehouse is suitable for the proper storage of the particular goods for which a licence is applied" (S. 26(3)).

¹²⁶ These requirements have been introduced in Brazil. See Annex I, Instruction 33, 2007.

and effective drainage and sufficient clean solid ground at the warehouse entrances to minimize seepage of water and mud into the warehouse; has an even floor with all cracks repaired; and complies with fire prevention and control requirements of insurance policies.¹²⁷

As an example of requirements in a more sophisticated warehousing system, the legislation for grain warehouses in Kazakhstan specifies that physical requirements include access control, weighing equipment and storage facilities; serviceable handling equipment and ventilation systems; functioning grain-cleaning machines and dryers (if provided as part of the warehouses' service); serviceable processing equipment; functioning and calibrated measurement equipment; and proof of compliance with environmental protection requirements.¹²⁸ In addition, countries may require the availability of an internet connection for the warehouse receipts registry or to maintain required information technology.¹²⁹

- *Conditions with respect to the person of the warehouse operator.* To ensure that the warehouse operator is legally and financially capable to manage a public warehouse, legislation commonly determines several requirements that he or she must meet. The operator who obtains the licence will be legally responsible for the warehouse. To ensure that the operator has the right to use the premises, legislation often requires that the operator owns it.¹³⁰ In other systems, the warehouse operator may either be the owner or have a registered lease vesting the operator the right to use the premises as a warehouse.¹³¹ Furthermore, to ensure

that the operator has sufficient financial backing, the operator is usually required to fulfil specified minimum financial and net worth requirements.¹³² In some countries, this requirement takes the form of providing sufficient start-up capital, proving sufficient financial capability to conduct warehousing or complying with a set of minimum capital levels.¹³³

Relevant convictions of the applicant may be considered in order to protect the system from warehouse operators. For example, under Brazilian warehouse legislation, an applicant who has been convicted of negligent or fraudulent bankruptcy, embezzlement, breach of trust, deceit or theft will not be granted a warehouse licence.¹³⁴ Similarly in Tanzania, licence requirements include "good business and management records and no involvement in any criminal proceedings involving business and dishonesty or impropriety on the part of the warehouse director or manager."¹³⁵

- *Requirements of warehouse personnel.* Licensing requirements often set further conditions concerning warehouse personnel. They must be trained and qualified to adequately carry out warehousing activities, such as weighing and grading commodities upon deposit. For example in Kazakhstan, licensing requirements for grain warehouses include staff who are specialists with appropriate technological education.¹³⁶ In India and Brazil, the certification and accreditation requirements include that warehouses have personnel who fulfil staff training requirements.¹³⁷ In Turkey, warehouses are generally required to have necessary warehouse staff.¹³⁸

¹²⁷ Sec. 8(3) and (4) and First Schedule, Warehouse Receipt System Regulations, 2007. Uganda.

¹²⁸ See Qualifications Appendix, Regulations on approval of rules for licensing, 2007. Kazakhstan.

¹²⁹ See e.g., Art. 14, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine; Art. 8, Regulation of Agricultural Products Licenced Warehousing, 2013. Turkey.

¹³⁰ See e.g., Qualifications Appendix, Regulations on approval of rules for licensing, 2007. Kazakhstan.

¹³¹ So e.g. in India (S. 3, Warehousing Development & Regulatory Authority (Warehouse Accreditation) Regulations, 2011); the Philippines (S. 5, Reg. IV, Revised Rules and Regulations of the National Food Authority on Grains Business, 2006) and Tanzania (S. 18 Warehouse Receipts Act, 2005).

¹³² See e.g., 7 C.F.R. 735.100(b) and (c). US.

¹³³ See e.g., Art. 2, Ley 9643. Argentina; Sec. 18, Warehouse Receipts Act, 2005. Tanzania; Art. 8, Regulation of Agricultural Products Licenced Warehousing, 2013. Turkey.

¹³⁴ Art. 1, Decree 1102 of 21, 1903. Brazil.

¹³⁵ Sec. 18, Warehouse Receipts Act, 2005. Tanzania.

¹³⁶ See generally, Qualifications Appendix, Regulations on approval of rules for licensing, 2007. Kazakhstan.

¹³⁷ Sec. 3, Warehousing Development & Regulatory Authority (Warehouse Accreditation) Regulations, 2011. India; Annex I, Instruction 33, 2007. Brazil.

¹³⁸ Art. 8, Regulation of Agricultural Products Licenced Warehousing, 2013. Turkey.

- *Performance guarantees.* To assure depositors and creditors that their rights and interests will be protected in case of damage or loss of the stored goods, licensing provisions commonly require warehouses to provide for insurance, bonds and/or other performance guarantees. These guarantee, even before starting warehouse operations, that potential risks are covered. Risks include damage or loss of the stored commodity through natural disasters and negligence or fraud on the part of the warehouse operator or personnel. (Performance guarantees are further discussed in Section 4.3.2 below.)
- *Operational rules and storage fees.* Also important for depositors, creditors and other participants is how a warehouse is operated. All participants benefit when all licenced warehouse operations are harmonized and thereby predictable. When operational rules are reviewed by the oversight authority, a depositor can go to any licenced warehouse and expect a similar level of warehouse services. To verify and approve the intended warehouse operational rules, the legislator can require that the applicant provide the authority with his or her draft of operational and administrative rules, together with a storage fee schedule. For example, in France applicants for a licence are required to submit with their application the draft of rules of operation for the establishment.¹³⁹ In Argentina, applicants are required to submit their operational and administrative rules, including the system for monitoring and cleaning the warehouse and the maximum rates for deposit and other operations, such as insurance, raising grain, grain cleaning and drying.¹⁴⁰ For getting licenced under the federal American warehouse receipt system, applicants must demonstrate that their warehouse operating policies comply with industry standards.¹⁴¹ And to ensure continuous control and that a warehouse will not change its operational rules after obtaining a licence, the Brazilian legislation stipulates that any subsequent

changes in operation or tariffs must be approved and published by the licensing authority.¹⁴²

Issuance, suspension and revocation of licences. Legislation determines that the licensing authority grants a licence if all licensing conditions are met. The licence may usually be granted for specific kinds of commodities. For example in Uganda, after the licensing requirements are fulfilled, the authority can issue a licence to operate a warehouse, either public or private, to store the specific kinds of commodities that the warehouse is equipped for and its operator is capable of managing.¹⁴³ Commonly, the law determines a limited duration of validity for warehouse licences and registrations, which varies in most countries between one to five years. When a limited validity period is determined, control over warehousing requirements is strengthened, which in turn contributes to the integrity of warehouse operations. Tanzania and the Philippines determine a one-year validity period.¹⁴⁴ Similarly in Ukraine, grain warehouses must annually obtain a certification that their facilities and practices meet government standards.¹⁴⁵ In Turkey, warehouse licences are valid for two years.¹⁴⁶ In Brazil, certifications of warehouses open to the public for storing agricultural products last for five years, assuming continual compliance with certification requirements as confirmed by the inspection services provider.¹⁴⁷

Before the end of the validity period, the licensing authority may suspend or revoke a warehouse licence under specified circumstances, usually in the case of a violation of or failure to comply with the requirements of the warehouse receipt legislation. For example in Ukraine, if after an inspection a warehouse is found not to comply

¹³⁹ Art. R522-2, C. comm. France.

¹⁴⁰ Art. 2, Ley 9643. Argentina.

¹⁴¹ 7 C.F.R. 735.100(b) and (c). US.

¹⁴² Art. 1, Decree 1102, 1903. Brazil.

¹⁴³ Sec. 25(1), Warehouse Receipt System Act, 2006; Sec. 4, Warehouse Receipt System Regulations, 2007; Warehouse Licensing Criteria, Uganda Commodity Exchange, p. 2. Uganda.

¹⁴⁴ Sec. 17, Warehouse Receipts Act, 2005. Tanzania; Sec. 15, Reg. IV, Revised Rules and Regulations of the National Food Authority on Grains Business, 2006. The Philippines.

¹⁴⁵ Art. 11, Law on Grain. Ukraine.

¹⁴⁶ Art. 11(3), Regulation of Agricultural Products Licenced Warehousing, 2013. Turkey.

¹⁴⁷ Annex II Art. 5.2.4, Instruction 33, 2007. Brazil.

with the requirements, the licensing authority will suspend the warehouse's certificate for up to 30 days. The warehouse then must correct any aspects of non-compliance, after which the certificate will be revoked if it does not.¹⁴⁸

Warehouse registry and public information.

Depositors and other participants could want to be informed and should be able to easily check that, before storing goods in a warehouse, the warehouse is in fact licenced under the warehouse receipt system and therefor meets all licensing requirements. They could also want to check where the closest licenced warehouses or licenced warehouses in general are located. To inform the public of licenced warehouses, legislation could require the licensing and oversight authority to publish a list of licenced warehouses or the warehouse operator to publish notice of the licence. This contributes to the objective of strengthening transparency of and subsequently confidence in the warehouse system.

For documentation and control purposes, licenced warehouses are commonly registered in a registry maintained by the licensing authority. In Brazil and India, if the licensing authority authorizes a warehouse, it will include it on a list.¹⁴⁹ In Ukraine, the licensing authority maintains a central registry of certified grain warehouses.¹⁵⁰

Beyond maintaining a list, the authority could be required to make the list publicly accessible for any interested person or to publish a list of licenced warehouses. For example in Kazakhstan, local authorities are required to maintain a publicly accessible list of all licenced grain warehouses.¹⁵¹ The federal warehouse legislation in the United States requires the oversight authority to make the list of licenced warehouses public in order to facilitate public awareness.¹⁵²

In Brazil, when the licensing authority authorizes a warehouse, it shall publish notice in the largest circulation, local newspaper.¹⁵³ Similarly in Uganda, the licensing authority publishes, from time to time, names and addresses of those who have been granted a licence under the warehouse receipt legislation and a list of revoked licences along with the reasons for revocation.¹⁵⁴ Differently in Turkey, the obligation to inform the public is placed on the warehouse operator who is required to publish notice of the warehouse licence in the Trade Registry Gazette of Turkey.¹⁵⁵

When licensing requirements are publicly available and easily accessible, transparency and confidence in the system is strengthened because interested parties can check what requirements a licenced warehouse has fulfilled. This allows depositors, creditors and other participants to better assess their risks related to the storage of goods in warehouses, as well as the risks associated with lending against or buying receipts issued for those goods. For example, the Uganda Commodity Exchange (UCE), which is the country's current regulatory authority, publishes detailed licensing criteria for warehouses.¹⁵⁶

Administrative requirements of licenced warehouses. In addition to the warehouses' obligations to comply with licensing requirements and inspections, legislation could impose a number of regulatory and administrative obligations on licenced warehouses. The two requirements that are found in most countries concern record-keeping and reporting and trading in the type of goods the warehouse is authorized to store.

Record-keeping and reporting. A country could include explicit requirements for record-keeping for warehouse operators in its legislation. Record-keeping requirements serve to increase trust in the system and help to minimize instances of document (receipt) fraud. Most legal systems

¹⁴⁸ Art. 29, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine.

¹⁴⁹ See Art. 1, Decree 1102, 1903. Brazil. See also the homepage of the Indian Warehousing Development and Regulatory Agency, Details of warehouses registered with WDRA (02.08.13), at <http://wdra.nic.in/default.htm>.

¹⁵⁰ Art. 11, Law on Grain. Ukraine.

¹⁵¹ See Sec. 4(21), Regulations on approval of rules for licensing, 2007. Kazakhstan.

¹⁵² See 7 U.S.C. §253. US.

¹⁵³ Art. 1, Decree 1102, 1903. Brazil.

¹⁵⁴ Sec. 38, Warehouse Receipt System Act, 2006. Uganda.

¹⁵⁵ Art. 8, Law on Licenced Warehousing, 2005. Turkey.

¹⁵⁶ See Warehouse Licensing Criteria, Uganda Commodity Exchange.

require that warehouses keep detailed records of all deposits and releases, as well as any receipts issued, lost, replaced or surrendered. Record-keeping procedures should be designed to minimize missing goods. Note, in an electronic warehouse receipt system, the required records kept by the warehouse could be significantly different from a system of paper receipts.

In Argentina there are requirements that warehouses must keep track of, in numerical and chronological order, such as the details of all goods deposited including information about the type, quality, quantity, owners, serial numbers (if applicable) and term of storage.¹⁵⁷ Several countries have gone as far as providing the record books to be used by warehouses to ensure that certain data is maintained. In cases where a country has implemented a centralized registration system for warehouse receipts, warehouses could be further required to submit receipt data or any data with respect to their operations.

Data collection from the records of warehouses can be helpful to governments when they compile gross statistics of the usage and effectiveness of the warehouse receipt system. In Ukraine, on a monthly basis, grain warehouses must submit information to the Ministry of Agrarian Policy and Food on the amount and types of grain stored to aid the government in its sector control policies.¹⁵⁸

Trading in the type of goods the warehouse is authorized to store. A legislator may decide to explicitly prohibit operators of licenced warehouses from trading in the goods it is authorized to store. The policy rationale for this prohibition is that if a warehouse buys and sells commodities of the type it stores, there is an added risk that the warehouse may trade the stored goods and perhaps be unable to produce them at the time of settlement or presentation of a receipt. Such prohibitions make warehouse receipts less risky as collateral by helping to ensure that stored goods underlying receipts are available for settlement or recovery. While some

countries have included a prohibition on trading in the type of goods stored, many countries implicitly allow warehouses to trade in goods to allow them to raise money. Note, however, that in Brazil there is a notable exception where warehouses explicitly are permitted trade in the type of agricultural products that they store under Law 9973 of 2000.¹⁵⁹

Inspections. Warehouse inspection is crucial to ensure the integrity of and confidence in the warehouse system. Inspections ensure compliance with the conditions of the warehouse licence and warehouse receipt legislation. Whenever legislation introduces a licensing obligation for warehouses, it foresees some corresponding form of monitoring or inspections. This strengthens the confidence of depositors, creditors and buyers of warehouse receipts by assuring them that the underlying goods are adequately stored, graded, weighed, etc. It also ensures that competing warehouses are following the rules. The inspections could be carried out by the primary responsible authority or, where legislation allows for it, private-sector entities.

All reviewed legislation addresses warehouses inspections. All countries in this study allow for an authority to oversee inspection of the warehouse after a licence is applied for; these inspections serve to verify that all licensing requirements are met. Subsequently, inspections are commonly foreseen in specified or unannounced intervals to control the warehouse's compliance with the licence provisions and warehouse receipt legislation. Many countries also foresee annual inspections.

For example in India, after a warehouse is accredited, the accreditation agency may initiate the inspection of the registered warehouse once every year.¹⁶⁰ In both Kazakhstan and Ukraine, grain warehouses must be inspected annually after obtaining a licence.¹⁶¹ In Ukraine, inspectors

¹⁵⁷ See Art. 123(2), Comm. Code, 1889, as amended. Argentina.

¹⁵⁸ See Arts. 19 and 20, Law on Grain. Ukraine.

¹⁵⁹ Art. 8, Law 9973, 2000; Arts. 11 and 12, Decree 3855, 2001. Brazil.

¹⁶⁰ Sec. 10, Warehousing Development & Regulatory Authority (Warehouse Accreditation) Regulations, 2011 India.

¹⁶¹ See Sec. 4(19), Regulations on approval of rules for licensing, 2007. Kazakhstan; Art. 14, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine.

may conduct additional unscheduled audits after receiving a written request that alleges infractions, to check on corrections of noted infractions or after receiving a request of law enforcement authorities and courts.¹⁶² Under the federal warehouse system in the United States of America, the oversight authority inspects warehouses that have obtained a licence at unannounced intervals to check compliance with requirements.¹⁶³ Most countries foresee that the competent authority may at any time inspect any licenced warehouse, as for example in Uganda and the Philippines.¹⁶⁴ The provision for unannounced inspections, in addition to scheduled ones, serves to effectively ensure compliance with the law.

With a related purpose, legislation could include requirements that the warehouse operator submit information for review to the overseeing authority. In France, in addition to inspections, operators of general warehouses must provide in the first month of every year a report on their past year's activity to the inspections authority, the General Inspectorate of Industry and Trade, of the district where the warehouse is located.¹⁶⁵

Depending on legal tradition, legislation could allow the oversight authority to authorize private-sector entities or persons to carry out inspections. For example in Uganda, the oversight authority issues warehouse inspection licences to other persons, in addition to its own personnel, where it deems it is necessary to fulfil the aims of its warehouse receipt legislation. These private licenced inspectors must immediately report irregularities to the authority.¹⁶⁶ In Brazil, agricultural warehouses are required to apply for a certification through an authorized private inspection contractor that

is under the authority of the national Ministry of Agriculture, Livestock and Food Supply.¹⁶⁷ The authorized inspection contractor reviews required documentation, conducts an initial inspection, issues or denies a certification and thereafter continually inspects the warehouse for compliance.¹⁶⁸ A particularity in this regard is in India where the inspections are foreseen by different actors on two levels: the primary responsible state authority and accreditation agencies that are registered with the authority.¹⁶⁹

Note that as inspections and the powers to enter and investigate premises are sensitive encroachments of civil rights, any assignment of inspection powers must commonly be based on a parliamentary-level law and overseen by the primary responsible authority.

Performance guarantees for warehouses

The overall legislative goal for warehouse performance guarantee requirements is to protect the rights of depositors, creditors and other receipt holders while the underlying goods are stored in a warehouse. Capable of taking many forms, performance guarantees should guarantee the receipt holder's rights in case of warehouse default or failure to release the expected stored goods. From the point of view of individual lenders and creditors, this makes lending against receipts a less risky undertaking that in turn attracts them to extend credit against the receipts as collateral. Furthermore, at the whole finance system level, lenders may offer credit at more affordable rates to even small agricultural producers if they trust the system and if warehouse receipts used as collateral are sufficiently low risk.

All of the reviewed legal frameworks for a warehouse receipt system require some kind of performance guarantees for warehouses. A legislator could foresee several performance guarantees, in particular:

¹⁶² Art. 27, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine.

¹⁶³ See 7 C.F.R. 735.108. US.

¹⁶⁴ Sec. 5(c) and 67, Warehouse Receipt System Act, 2006. Uganda; Reg. XV, Revised Rules and Regulations of the National Food Authority on Grains Business, 2006. The Philippines.

¹⁶⁵ Art. R522-18, C. comm. France.

¹⁶⁶ Sec. 18, Warehouse Receipt System Regulations, 2007. Uganda. In Tanzania, the oversight authority can authorize persons to be warehouse inspectors, who then are empowered to inspect warehouse premises and stored goods to ensure the warehouse operator's compliance with the legislation. Sec. 28 et seq., Warehouse Receipts Act, 2005.

¹⁶⁷ Annex II Art. 5.2.1, Instruction 33, Brazil.

¹⁶⁸ Ibid., Annex II Art. 5.2.

¹⁶⁹ Sec. 35(2)(i), Warehousing Act, 2007; Sec. 10 and 17, Warehousing Development & Regulatory Authority (Warehouse Accreditation) Regulations, 2011. India.

- insurance and performance bonds, or letters of credit
- indemnity or guarantee fund

The most common performance guarantees are mandatory insurance taken out or performance bonds posted by warehouse operators as licensing requirements. Some countries additionally established a mandatory or voluntary indemnity or guarantee fund mainly financed by warehouse contributions, as creditors perceived the other guarantees as insufficient.

Mandatory insurance and performance bonds, or letters of credit. Legislation may require the warehouse operator to post a bond. The bond is usually required to be taken out in favour of the oversight institution, and it conceptually serves as a guaranteed source of compensation funds in the event of warehouse failure. If a bonding requirement were included in legislation, it would typically state the minimum bonding level, duration and acceptable types of bonds and to whom the bond is taken in favour of. For example in the Philippines, general commodity warehouses are required to post a bond for obtaining a licence; the amount is determined by the Department of Trade and Industry and must be at least one-third of the market value of the maximum quantity of commodities to be received.¹⁷⁰ However, in some cases, this alone may not be a sufficient guarantee for attracting creditors to lend against receipts.

Legislation could also require that the stored goods be insured. Insurance usually covers risks outside the warehouse operator's sphere of influence, so it would not pay compensation in cases of warehouse operator negligence or illegal activity. It is common for legislation with mandatory insurance requirements to provide both a minimum coverage value and a list of minimum events that must be covered by the insurance policy. The mandatory minimum policy value is typically the maximum value of goods to be stored in the warehouse. For example in Brazil, the warehouse legislation for agricultural products requires warehouse operators to insure

stored agricultural products against fire, flood and any other weather event that may damage or destroy the stored products.¹⁷¹ Goods underlying issued CDAs and WAs must be insured against fire, lightning, explosions of any kind, electrical damage, windstorms, floods, hurricanes, cyclones, tornadoes, hail, smoke, storms, theft, falling aircraft, spacecraft or other devices and impact of vehicles that may destroy or damage the underlying product.¹⁷²

Often, legislation combines several guarantee requirements. This is the case in Argentina where authorized warehouses must post a bond of a level set by the Ministry of Agriculture, Livestock and Fisheries of between a minimum of 10 000 pesos and a maximum of 10 percent of the capital of the warehouse.¹⁷³ To issue warehouse receipts for the stored goods, warehouses must additionally insure the goods against fire to a level set by the ministry, if the goods are not already insured by the depositor.¹⁷⁴ In the Philippines, licensing and registration of a grain warehouse require – besides a cash or surety bond of an amount and type determined by the National Food Authority (NFA) – a fire insurance policy accredited by the NFA.¹⁷⁵

Differently, legislation could require the warehouse to provide a guarantee but leave a choice among kinds of guarantees. For example in the United States of America, warehouses wishing to be federally licenced under the United States Warehouse Act (USWA) must post a bond to guarantee performance of obligations under the licence, or substitute this by providing another financial assurance such as obligations that are unconditionally guaranteed by the American Government, irrevocable letters of credit or participation in an indemnity or insurance fund administered by a state government.¹⁷⁶ Licenced warehouses may be required by the oversight institution to provide

¹⁷⁰ Sec. 4, Bonded Warehouse Act, 1932. The Philippines.

¹⁷¹ Art. 6, Law 9973, 2000; Art. 7, Decree 3855, 2001. Brazil.

¹⁷² See Art. 22, Law 11076, 2004. Brazil.

¹⁷³ Art. 2(g), Ley 9643; Art. 4(g), Decreto Nacional S/N, 1914. Argentina.

¹⁷⁴ See Arts. 5, 7(1), Ley 9643. Argentina.

¹⁷⁵ Sec. 5, Reg. IV, Revised Rules and Regulations of the National Food Authority on Grains Business, 2006. The Philippines.

¹⁷⁶ 7 U.S.C. §245(a); 7 C.F.R. 735.102(a). US.

additional guarantees.¹⁷⁷ In France, a guarantee of an amount proportional to storage surface area is required from the warehouse operator, who may provide this guarantee in cash, in annuities, in securities admitted to trading on regulated markets or by a first mortgage on the estate in a value double the guaranteed amount. In this case, the guarantee can also be provided by an authorized credit establishment or listed financial institutions or establishments.¹⁷⁸ Another similar example can be found in the grain warehouse provisions in Kazakhstan. Here, grain warehouse operators can choose to either participate in a guarantee fund or provide for private insurance for the fulfilment of obligations under grain warehouse receipts.¹⁷⁹ The guarantee fund was initially popular, but recently warehouse operators have largely favoured insurance, which is viewed as cheaper. However, insurance, in some cases, provides lower compensation to receipt holders than the guarantee fund does.¹⁸⁰

The required amount of assurance is often not specified in the primary legislation but left to the implementing regulations. This means that the implementing authority is flexible to adapt the required amounts to specific or changing circumstances. For example in India, the applicant must provide to the licensing authority a security deposit (by bank draft or a bankers cheque) of a national bank at specified rates, which are further determined in the implementing rules.¹⁸¹ The legislator could, however, give the regulatory authority a minimum limit that the insurance must cover as in Tanzania. Here, the primary law determines that, to obtain a licence, a warehouse operator must execute and file a bond with the licensing authority that is sufficient to secure performance of the warehouse operator's obligations under warehouse legislation.¹⁸² The licensing authority shall determine the amount of the bond, depending on an assessment of the warehouse

business and making it not less than 10 percent of the business's value.¹⁸³

Indemnity or guarantee fund. Legislation could additionally provide for an indemnity or guarantee fund that warehouses would contribute to and would compensate depositors and receipt holders in case of warehouse default. Such a fund covers risks for the creditor and depositor that the insurance market would not necessarily cover, particularly damages caused by fraud and gross negligence of the warehouse operator.¹⁸⁴ A good number of countries have introduced guarantee or indemnity funds mostly as a response to the lack of creditors' confidence in warehouse receipts as secure collateral. The aim is to attract creditors by guaranteeing their rights. Another advantage of such funds is that their existence can drive bonding and insurance market rates lower, thereby allowing smaller warehouses to enter the market.¹⁸⁵

A potential challenge can be the initial funding of the indemnity or guarantee fund. Initial funding could be provided by the government, while the subsequent funding could be derived from warehouse contributions and other sources. For example in Bulgaria, an indemnity fund was established in 1999 with a three-year interest-free loan of USD 2.5 million. Similarly, in Ukraine, the guarantee fund was initially established with a one-year interest-free loan from the Government of Ukraine. In Kazakhstan, the guarantee fund was initially established by the state as a non-profit entity with a capital infusion of USD 15 million (see Box 2).

One concern sometimes raised is the perceived risk that warehouse operators fulfilling their performance obligations pay for those not honouring their obligations.¹⁸⁶ However, this perceived unfairness can be prevented or minimized by adequately regulating the indemnity fund and oversight mechanism. Moreover, the above advantages of attracting

¹⁷⁷ 7 U.S.C. §245(c). US.

¹⁷⁸ Arts. L522-12 and R522-11, C. comm. France.

¹⁷⁹ Art. 16(1) and (2), Law on Grain. Kazakhstan.

¹⁸⁰ Zhazykbayeva, 2012, p. 6.

¹⁸¹ Sec. 6, Warehousing (Development and Regulation) Registration of Warehouses Rules, 2010. India.

¹⁸² Sec. 19(1), Warehouse Receipts Act, 2005. Tanzania.

¹⁸³ Sec. 31(1) and (3), Warehouse Receipts Regulations, 2006. Tanzania.

¹⁸⁴ See EBRD, 2004, p. 8.

¹⁸⁵ See Varangis & Larson, 1996, p. 124.

¹⁸⁶ FAO, 2009, p. 31.

Box 2: Indemnity fund in Kazakhstan

The basic mechanics of an indemnity fund are illustrated well in Kazakhstan, where grain warehouses issuing grain warehouse receipts can choose between the participating in the established guarantee fund and taking out private civil insurance to guarantee the performance of obligations under grain warehouse receipts.

The compensation by the established guarantee fund is a minimum of 80 percent of the value of the grain warehouse receipt, which is based on set prices for grain qualities.

An applicant claiming compensation from the fund must submit copies of the warehouse receipt and confirmation from the local inspector that the warehouse failed to produce the grain covered by the receipt. The fund's administering institution shall decide on the compensation claim within 30 days, and if it decides that all requirements are satisfied, the pay out is transferred within ten days. Compensation is denied where the warehouse is exonerated from fault for the loss, due to *force majeure* or gross negligence or guilt on the part of the owner of the stored grain. The guarantee fund was initially established by the state as a non-profit entity with a capital infusion of USD 15 million. This budget is augmented through the entry fees and annual dues from member warehouses.

creditors and lowering bonding and insurance market rates serve the interest and advantage of all warehouse operators.

The modalities for establishing a guarantee fund differ among countries: some prescribe the warehouses' participation as mandatory and others as voluntary. An example of both mandatory and voluntary participation schemes is the United States of America. Relatively early, warehouse indemnity funds were established here. Under the voluntary USWA scheme, the primary guarantee mechanism is the USWA's warehouse bonding requirements.¹⁸⁷ However, the voluntary scheme overlays a range of different state laws, and typically warehouses may choose to be regulated by the federal-level or local state-level requirements.¹⁸⁸ Furthermore, at the federal level, participation in an indemnity or insurance fund administered by a state government is one of several permissible financial assurances that a federally licenced warehouse may provide, in addition to the possibility of posting a bond to guarantee performance of the licence obligations.¹⁸⁹

At the state level in the United States, some states have chosen to introduce indemnity funds as a guarantee mechanism for warehouses regulated under their particular state-level

system, and there can be mandatory participation requirements. For example, the state of Tennessee established a grain warehouse indemnity fund in 1989.¹⁹⁰ Originally set at USD 3 million, the fund balance was increased to USD 10 million after a 2011 amendment.¹⁹¹ Producers must contribute to the fund through a tax assessed per volume of production, until the fund reaches a set level.¹⁹² The fund is designed to compensate claimants after any loss from a grain warehouse, with general compensation set at 85 percent of the loss's value up to USD 100 000. However, loss of grain covered by a warehouse receipt is compensated at 100 percent of the value of the receipt.¹⁹³ According to the Tennessee Department of Agriculture, in its nearly 25 years of operation the indemnity fund has compensated 76 producers for losses sustained as a result of a grain dealer or warehouse failure, a total value of USD 958 996.¹⁹⁴

Similarly, the state of Iowa, a leading state in agricultural production, has introduced a grain warehouse indemnity fund.¹⁹⁵ Licenced warehouses must contribute to the fund on a basis related to their storage capacity.¹⁹⁶ Depositors can apply to the fund for compensation after warehouse failure, and approved claims receive up to 90 percent of the

¹⁸⁷ 7 U.S.C. § 245. US.

¹⁸⁸ Iowa Department of Agriculture and Land Stewardship, 2014.

¹⁸⁹ 7 U.S.C. §245(a) and 7 C.F.R. 735.102(a). US.

¹⁹⁰ Tenn. Code Ann. § 43-32-201 et seq. US.

¹⁹¹ Ibid., § 43-32-207; Tennessee Department of Agriculture, 2014. US.

¹⁹² Tenn. Code Ann. § 43-32-202. US.

¹⁹³ Ibid., § 43-32-210(a)(1), (2).

¹⁹⁴ Tennessee Department of Agriculture, 2014.

¹⁹⁵ USDA, 2013b; Iowa Code § 203D.3(1). US.

¹⁹⁶ Iowa Code § 203D.3A. US.

Box 3: Quedan guarantee scheme in the Philippines

The guarantee mechanism – mandatory bonding requirements – was created by the 1932 Bonded Warehouse Act. The banks did not consider these requirements to be sufficient and therefore tended not to accept agricultural commodities as collateral. Thus, the system was not widely used for agricultural finance. This changed when the quedan guarantee system was established.

The Quedan Financing Programme was instituted in 1978 under the Quedan Guarantee Fund Board, (since 1992, the Quedan and Rural Credit Guarantee Corporation [Quedancor]) to “accelerate the flow of investments and credit resources into the countryside so as to trigger the vigorous growth and development of rural productivity, employment and enterprises”.

Aiming to attract banks willing to lend against warehouse receipts as collateral, the quedan guarantee scheme combines core elements of a warehouse receipt system beyond those covered in the 1932 Bonded Warehouse Act to make lending against receipts more secure. Specifically, it combines additional third-party guarantees, warehouse accreditations, warehouse inspections and warehouse certifications.

Participation in the quedan guarantee scheme is voluntary. To become accredited for participation, prospective participating warehouse operators must present a copy of the certificate of franchise, a warehouse receipt, a stock inspection report, an affidavit of stock ownership and evidence that the stock is insured, in addition to posting a security bond for the National Food Authority for one-third of the value of the stored stock. Loans under the quedan guarantee scheme are for up to 180 days for rice, but only 90 days for other grains. Quedancor officials inspect the goods stored in the accredited warehouses at least twice during a 180-day period. When the warehouse receipt is pledged and a loan is released, the lending bank applies to Quedancor for a guarantee, which covers up to 80 percent of the value of the stored goods.

value of the lost grain, up to USD 150 000.¹⁹⁷ To recover funding, the oversight authority for the fund is given the power to attach a lien to the failing warehouse.¹⁹⁸ The legislation prescribes detailed procedures for applying and assessing levies to fill the fund, and for applying for compensation.¹⁹⁹ Note, however, that the use of indemnity funds at the state level is not universal, and several high-producing states, such as Nebraska, do not implement indemnity funds.²⁰⁰

In the Philippines there is an optional guarantee system with a fairly unique kind of guarantee mechanism. Here, the legal framework included mandatory bonding requirements, yet this was not sufficient for banks, which tended not to accept agricultural commodities as collateral.²⁰¹ In response, a voluntary accreditation scheme for warehouses was established through the quedan guarantee system, which combines elements of a guarantee fund with other elements such as inspections.²⁰² Participating warehouses must fulfil additional requirements for guaranteeing their performance. Additionally, when the warehouse receipt is pledged and a

loan is released, the lending bank applies to the Quedan and Rural Credit Guarantee Corporation (Quedancor) for a guarantee.²⁰³ A Quedancor guarantee compensates up to 80 percent of the value of the stored goods in case of warehouse default (see Box 3).²⁰⁴

Other countries, such as Ukraine, Turkey and Indonesia, have set up a mandatory guarantee fund in which licenced warehouses must participate. In Ukraine, during the first years of implementing the 2002 Law on Grain that had introduced grain warehouse receipts, the grain warehouse receipt system was not functioning optimally as a credit facilitator because certain factors had undermined the trust of lending financial institutions.²⁰⁵ In particular, the legislation did not provide for performance guarantees, and several cases of warehouse default occurred that undermined the participants’ trust in the system.

To guarantee performance under warehouse receipts and decrease the perceived risks for lenders,²⁰⁶ in 2012 Ukraine established a guarantee fund for grain warehouses through

¹⁹⁷ Ibid., § 203D.6(8); Iowa State University, 2002.

¹⁹⁸ Iowa Code § 203D.5A. US.

¹⁹⁹ Ibid., § 203D.

²⁰⁰ Nebraska Grain & Feed Association, 2014.

²⁰¹ Coulter & Shepherd, 1995, p. 54.

²⁰² World Bank, 2005, Appendix 1.

²⁰³ Sec. 4, Quedan and Rural Credit Guarantee Corporation Act, 1992. The Philippines.

²⁰⁴ Coulter & Shepherd, 1995, pp. 52, 53.

²⁰⁵ See FAO & EBRD, 2010, pp. 23, 24.

²⁰⁶ See Art. 48, Law on Grain (listing the objectives of the Guarantee Fund). Ukraine.

an amendment to the Law on Grain.²⁰⁷ All grain warehouses issuing warehouse receipts are required to become members of the fund and contribute according to the amount of grain they take in.²⁰⁸ If a holder of a warehouse receipt presents it for release of goods and the warehouse defaults in releasing the stored grain, the receipt holder can apply for reimbursement from the guarantee fund for up to 90 percent of the unrecovered value.²⁰⁹ The guarantee fund has its own legal personality and management structure.²¹⁰

Initially established with a one-year interest-free loan from the Government of Ukraine, the fund will be financed by warehouse entrance fees and regular warehouse contributions, income derived from the investment of the fund in government securities, fines paid by non-compliant warehouses and interest payments from fund deposits with banks. No funding can carry over from year to year. The fund is targeted to remain between 10 and 20 percent of the value of the grain warehouse receipts issued during the preceding year.²¹¹ Furthermore, the state secures that the fund is able to reimburse holders; if the available fund levels are insufficient to settle the amount to be reimbursed, the deficit will be covered by a loan from the state budget.²¹²

Similarly, licenced warehouses in Turkey are required to participate in a compensation fund scheme, which is regulated under the Licenced Warehouses Compensation Fund Regulation. This fund is not exclusively aimed at compensating the depositors after losses in the event of a default on warehouse obligations, but it also pays for the development of licenced warehousing activities, training, supervision and administrative expenses and costs required to carry out the tasks of the Law on Licenced Warehousing. The fund is financed through service fees paid by licenced warehouse operators for the calendar year; 10 percent of the product registration fees

for the purchase and sale of securities conducted through trading at stock exchanges; 0.0005 percent of the cost of products traded through trading securities; income collection and interest; grants and contributions; and other sources.²¹³

In Indonesia, the warehouse receipt system suffered because it did not have a relatively affordable security mechanism in the event that a warehouse manager became insolvent or was otherwise unable to perform his or her obligations.²¹⁴ To address this, the amended law of 2011 formed the Warehouse Receipt Insurance Institution. The Insurance Institution was established as an independent body that reports to the Minister of Trade to increase the confidence of the economic actors and enhance the integrity of the system.²¹⁵ For its financing, the Insurance Institution determines and collects contributions for the registration of a warehouse manager and a security fee on any stored goods. Warehouse managers are required to become members and pay dues to the Insurance Institution.

The Insurance Institution guarantees the rights of the warehouse receipt holder and security right holder in the event of failure, default or disability of the warehouse manager to fulfil his or her duties in storing and handing over the goods.²¹⁶ The Insurance Institution's tasks include protecting the warehouse receipt holder and/or security right recipient if any failure, disability and/or insolvency occurs to the warehouse manager.²¹⁷ To carry out those functions, the Insurance Institution is responsible for formulating, determining and implementing policies to secure the goods managed by warehouse managers.²¹⁸

Additionally, the Insurance Institution formulates and determines policies to maintain the stability and integrity of the warehouse receipt system and the settlement policies of warehouse

²⁰⁷ Law on amending certain laws concerning guarantee fund performance, 2012. Ukraine.

²⁰⁸ See Arts. 52 and 56, Law on Grain. Ukraine.

²⁰⁹ See *ibid.*, Art. 49.

²¹⁰ See *ibid.*, Arts. 47, 51, 55, 58 and 59.

²¹¹ See *ibid.*, Art. 55.

²¹² *Ibid.*, Art. 57.

²¹³ Art. 24, Law on Licensed Warehousing, 2005. Turkey.

²¹⁴ Marseille & Karyadi, 2011.

²¹⁵ Art. 7, Law No. 9 (inserting Art. 37A), 2011; Elucidation to Law No. 9, 2006. Indonesia.

²¹⁶ Art. 1(14), Law No. 9, 2011. Indonesia.

²¹⁷ *Ibid.*, Art. 7 inserting Art. 37D.

²¹⁸ *Ibid.*, Inserting Art. 37E.

managers who have defaulted on their obligations.²¹⁹ The Insurance Institution has the authority to determine and collect contributions when a warehouse manager is first registered; determine and collect a security fee on any stored goods; manage the assets and duties of the Security Institution; acquire and assure the data of the stored goods is in accordance with data in the warehouse receipt, finances and reports submitted by the warehouse manager; reconcile, verify or confirm the above data; determine the requirements, procedures and provisions for claim payment; and appoint, authorize or assign other parties to act on the Insurance Institution's behalf.²²⁰ The Insurance Institution may also request the warehouse manager to provide any information or data necessary to carry out its duties.²²¹

Contractual rights and obligations of the parties

The warehouse receipt system is underpinned by the contractual relationship between warehouses and depositors: the warehouse agrees to store the depositor's goods for a defined period of time and the depositor agrees to pay a storage fee. In an overwhelming majority of countries where warehousing is common, it has been found necessary to establish a certain level of minimum, standard warehousing contract-specific obligations. These obligations can usually not be removed through contractual agreement.

Minimum obligations serve to protect the rights of depositors, particularly smallholder farmers who often lack warehouse market awareness or practical access to more than one warehousing option. At the same time, minimum warehouse obligations protect the rights of lenders, buyers and other participants in the system. For warehouse receipts to be viewed as low-risk collateral, lenders must be reasonably certain that the stored goods underlying every receipt receive an expected level of care. These obligations can be contained in the legal framework applicable to all warehouses. And specific obligations can be

included in specific warehouse receipt system legislation. At times, general obligations for all warehouses may apply in addition to specific requirements based on the type of warehouse.

Regardless of whether they are included as requirements for all warehouses or only as requirements for those in a narrower warehouse receipt system, several core obligations of a warehouse storage contract are widely and explicitly incorporated in many legal systems. The core obligations span the storage cycle, from taking a deposit to caring for and releasing the goods. The common provisions concerning the contracting parties' obligations under the storage contract can be grouped in:

- primary obligations of the parties
- ancillary warehouse obligations
- performance risk allocation

Further obligations of a warehousing contract's parties are typically determined in the warehouse receipt system or general legislation.

Primary obligations of the parties. The primary obligation of warehouses is to store the goods for a defined period of time and deliver or release them upon presentation of a valid receipt and satisfaction of any due fees. This is a universal obligation included in every legal framework of warehouse receipt systems.

The primary obligation of the depositor of goods for storage is to pay the agreed storage fee and to retrieve the goods after the storage period ends. The parties may not be free to determine the storage fees. Some countries may forbid warehouses from charging exorbitant fees, charging above a preset schedule or applying different pricing rules to different customers. For example under Brazil's general warehouse legislation, a warehouse operator may not give preferential pricing below the posted tariff schedule to any depositor.²²²

²¹⁹ Ibid.

²²⁰ Ibid., Inserting Art. 37F.

²²¹ Ibid., Inserting Art. 37G.

²²² Art. 8, Decree 1102, 1903. Brazil.

Ancillary warehouse obligations.

Non-discrimination. Conceptually falling before storage takes place, the obligation of non-discrimination typically forbids warehouses from discriminating between potential depositors unless the goods are not of the type stored by the warehouse, the goods will damage other goods in the warehouse or the warehouse does not have sufficient capacity. Non-discrimination provisions can further rural development goals by ensuring that smallholders have equal access to warehouse services. Smallholders sometimes have a disadvantage in some areas where there is a practical monopoly on warehousing services and the administrative costs are lower for warehouses to focus on large depositors. Many countries have chosen to include some form of explicit non-discrimination provisions for warehouses.²²³

Duty of care. The legislation sets a minimum level of care that a warehouse operator must provide for the goods being stored. The duty of care sets a standard of expectation among the users of a warehouse receipt system that the underlying goods will maintain their expected value for the duration of the storage period. All reviewed countries have addressed the issue of warehouse duty of care in some form in their legislation. Depending on the country's common contractual practices and legal tradition, the legislation refers, for example, to good faith, the care expected from an owner of the goods²²⁴ or reasonable care.²²⁵

Instead of or along with setting a duty of care, legislation may prescribe a list of events for which warehouses will be liable for damages. Such is the case in Argentina where warehouses are liable for all losses or damages to goods from failure to abide by the duty of care, from theft, embezzlement, omissions and lack of diligence on the part of the warehouse.²²⁶ Usually, legislation determines the type of negligence a warehouse operator is liable for and whether the

warehouse operator shall also be liable for minor negligence.

Commingling of goods. In many cases, legislation includes provisions on the separate storage or commingling (mixing) of stored goods. The common obligation is for warehouses to separately store deposited goods, unless the goods are fungible commodities, in which case goods of the same type and quality can be stored together. The reason for including such provisions is to protect warehousing system users from physical damages or losses in value that can result from careless mingling of different depositors' goods. In an effective warehouse system, depositors and lenders can reasonably expect to get back what they put in the warehouse or in the case of fungible commodities goods of the same type, quality and value. To achieve this goal, in the United States of America at the federal level, detailed technical requirements have been put in place to govern practices for commingling.²²⁷ In Indonesia and Tanzania, the consent of the depositor or receipt holder is necessary before commodities can be commingled.²²⁸ Note that, in countries where commingling is not mentioned in the legal framework, commercial practice could be an important gap filler on this topic.

Performance risk allocation. It can be important to determine which party will bear the risks of loss of or damage to the stored goods if it is caused by an event that is unpredictable, inevitable and extraneous to the parties' sphere of control and that prevents one or both parties from performing their duties. A typical example might be an unforeseeable tornado in an area not known for tornados and that destroys the stored goods. In many legal systems, these circumstances are dealt with under the notion of *force majeure*.

The general rule of contract law under many legal systems is that the responsibility for these risks falls upon the owner of the goods. Often, parties can agree to change this rule. Whereas the

²²³ So e.g. Brazil, France, the Philippines, Turkey and the US.

²²⁴ So e.g., Arts. 123(4), and (5), Comm. Code, 1889, as amended. Argentina.

²²⁵ So e.g., Sec. 51, Warehouse Receipts Act, 2005. Tanzania.

²²⁶ See Arts. 126 and 127, Comm. Code, 1889, as amended. Argentina.

²²⁷ 7 U.S.C. §248(a). US.

²²⁸ Art. 25, Law No. 9, 2006. Indonesia; Sec. 52 and 53, Warehouse Receipts Act, 2005. Tanzania.

allocation of risks of damages and losses in case of *force majeure* might be left to general contract law, most of the reviewed countries have chosen to explicitly allocate liability in such cases, usually exempting the warehouse.²²⁹ The policy rationale for exempting a warehouse from liability in cases of *force majeure* is to not discourage businesses from operating warehouses due to risks out of their control.

Events that usually qualify as *force majeure* in warehousing practice include floods, storms, earthquakes or riots. Where the specific warehouse legislation does not specify what qualifies as *force majeure* events, they could be determined in the general provisions on contract law.

A similar provision explicitly excuses warehouses from responsibility for damages caused by characteristics of stored goods that are not readily perceived by the warehouse (such as defective goods stored in sealed containers).

Warehouse receipts: Legal status, content, form and registration

Legal status. Clearly defining the legal status of warehouse receipts is crucial for protecting the rights and expectations of all parties involved in a warehouse receipt system. In some legal systems, a warehouse receipt serves several conceptual legal functions, such as an ownership, a receipt and a contractual function. A warehouse receipt can serve an ownership function by establishing who may claim the goods and a receipt function by providing evidence of a paper or electronic trail of transactions of the underlying goods. A warehouse receipt can serve a contractual function because receipts often contain provisions for the storage agreement between the depositor and the warehouse.²³⁰ It can also serve an evidentiary function, as in Indonesia where a warehouse receipt is defined as documentary evidence of the ownership of goods stored in a warehouse.²³¹ And a receipt or a part or copy of a receipt can act as

a record keeper, aiding institutional oversight and informing national agricultural policy as part of an aggregate of statistical information. The legal framework should clearly delineate which functions the warehouse receipt will serve, as legal functions are closely related to what legal rights are represented by and transferred with a warehouse receipt.

Within many legal frameworks, two important distinctions with respect to a warehouse receipt's legal status are whether it is considered a document of title, and whether it is considered negotiable. Warehouse receipt legislation might explicitly state that a warehouse receipt is a document of title, thereby legally representing physical ownership of the underlying stored goods. It is important for the warehouse operator for verifying to whom the stored commodities shall be delivered. A document of title can also be a negotiable document. For example in the United States of America, § 7-104 UCC states that a document of title is negotiable if by its terms the goods are to be delivered to the bearer or to the order of a named person.

The choice of whether a warehouse receipt should be regarded as a document of title is informed by and should be consistent with a country's broader legal framework. Explicit definitions within legislation can help avoid confusion, particularly where a break from traditional commercial practice or legal norms is desired. In addition, the issue of negotiability and negotiable instruments affects transfer of underlying rights.

Single versus double receipts. Legislation may provide for warehouse receipts that fall into one or both of two categories: single or double receipts. The main distinction between single and double receipts is whether the ownership right and the pledge right over the stored goods are separately represented by two different documents.

A single receipt typically represents the largest bundle of rights over the underlying stored goods. It encompasses the right of ownership and the right to pledge them as collateral. The

²²⁹ So e.g. Argentina, Brazil, France, India, Kazakhstan, Uganda, Ukraine and the US.

²³⁰ See e.g., Kershner, 2004, pp. 16, 17.

²³¹ See Arts. 1 No. 2, Law No. 9, 2006. Indonesia.

single receipt may be used by the depositor as collateral to obtain financing, in accordance with legal rules for pledge rights or security interests.

On the other hand, a double receipt conceptually separates the right of ownership of from a pledge right on the underlying goods. Accordingly, the double receipt often consists of a certificate of title and a certificate of pledge (also called certificate of deposit and warrant in some countries).²³² The certificate of title represents the promise to deliver goods already deposited in the warehouse, and the pledge certificate grants a lien on the promised goods. It can be pledged to a creditor as part of an agricultural financing agreement.

Countries are roughly split down the middle on the choice between single or double receipts, as shown in Box 4. The choice between single and double receipts also depends on the country's legal tradition; it is strongly impacted by the broader legal framework for negotiable instruments and pledges. Many civil law countries with warehouse receipt systems have chosen to use double receipts, such as Argentina, Brazil, France and Kazakhstan. Conversely, most common law countries – including Canada, Uganda and the United States of America – implement single receipt systems.

There are exceptions where a civil law country has chosen to use single receipts and vice versa. For example, Tanzania's legal system is primarily influenced by common law and customary law traditions, yet it has chosen to implement a double receipt system. Often, these cases result from multiple influences on the development of a country's legal system. One interesting example is the Philippines where there are a variety of influences at play, including influences from Spanish, American, Filipino and Islamic legal traditions. Yet, the single warehouse receipt system is implemented, likely influenced in part by the fact that its core warehouse receipt legislation dates back to a period of American influence.

Box 4: Country choices between single and double receipts

| Single receipts | Double receipts |
|-----------------|-----------------|
| Canada | Argentina |
| Philippines | Brazil |
| Turkey | France |
| Uganda | Kazakhstan |
| United States | Tanzania |
| Ukraine* | Ukraine* |

**Ukraine allows for both single and double receipts*

Legislators may not need to choose between single and double receipts as mutually exclusive. For example, within Kazakhstan's broad framework, the Civil Code allows for both single and double warehouse receipts and states that special legislation requires using one or both types for a particular sector.²³³ But Kazakhstan exclusively provides for two-part grain warehouse receipts that consist of a matching warehouse certificate and pledge certificate.²³⁴ Ukraine maintains flexibility and allows for single and double grain receipts. Upon delivery of grain for storage, a Ukrainian warehouse issues, depending on the request of the grain owner, a single or a double depot certificate (warehouse receipt).²³⁵

Thus, the choice of whether to incorporate single and/or double receipts is largely predetermined by current commercial practices and requirements of the national commercial law on documents of title, securities, negotiable instruments and pledges. Both single and double receipts have equivalent advantages if they are situated properly within the broader legal framework. On this point, it is crucial that the receipt format be consistent with the general legal framework to ensure smooth implementation within the commercial order and rapid uptake by warehouses and lenders. If legislative drafters intend to make a break from

²³² See FAO, 2009, p. 18.

²³³ See Art. 797(1), Civil Code.Kazakhstan.

²³⁴ Art. 39(2), Law on Grain, Kazakhstan.

²³⁵ Art. 37, Law on Grain. Ukraine. Or the warehouse must issue a depot receipt, which is a document that acknowledges storage if neither a simple nor double depot certificate is issued. See *ibid.*, Art. 43.

legal tradition, clarity is essential, and special attention must be paid to providing outreach and industry training services. If there were any legal uncertainty over the procedures that govern transactions involving warehouse receipts, lenders and other players would be likely to be more reluctant to get involved in warehouse receipt finance.

Receipt details. Receipts must contain certain minimum documentary information. This minimum information serves a notice and identification function for all parties involved in the warehouse receipt system, from the warehouse operator to the depositor and from the lender to the eventual buyer of the stored goods. With each successive transaction after the original action of a depositor storing goods in a warehouse, the information contained in warehouse receipts becomes more important. A depositor or a buyer will want to assure his or her rights to a certain quantity and quality of product stored at a certain location. A lender will want to be certain of the location and value of the pledged collateral stored in a warehouse. A complete legal framework for warehouse receipts contains explicit requirements for the minimum information to be contained in them to protect the interests of each involved party.

For example the Brazilian legislation contains detailed requirements for the content of

warehouse receipts; these requirements are broadly representative of current good practices and the full range of protections to consider (see Box 5).

Because all warehouse receipt systems aim to satisfy similar notice functions with respect to providing information to involved parties, several core minimum requirements are common across countries. These frequent, minimum content requirements include the following:

- name and location of the warehouse where the goods are stored;
- unique receipt identification number;
- date of issue of the receipt and the duration of the storage agreement;
- statement whether the goods will be delivered to the bearer or a named person (negotiability);
- list of basic obligations and rights of the depositor and warehouse and/or reference to the applicable warehouse laws;
- rate of storage and handling charges and whether there will be a warehouse lien over the goods;
- signature of the warehouse operator or agent;
- whether the goods are insured;
- precise definition of the quality and quantity of stored products.

Box 5: Requirements for warehouse receipt details under Brazilian legislation

Brazil's Law 11076 of 2004 contains detailed requirements for the content of each part of their double warehouse receipts. Each receipt must contain the following:

- matching control number;
- a statement that the product is subject to warehouse laws;
- identification, qualification and address of the depositor and warehouse;
- the commercial identification of the warehouse;
- a drawn to order clause;
- the address of the storage location;
- product description and specification;
- its gross and net weight;
- its type of packaging;
- its number of volumes, as appropriate;
- the value of storage services and shipment and the frequency of billing statement;
- the person responsible for payment;
- identification and amount of insurance;
- qualification of the guarantee offered by the warehouse, if applicable;
- the date of receipt of the product and maturity of the deposit;
- the date of issue of the security;
- identification, qualification and signature of the legal representative of the warehouse;
- precise identification of the rights these documents confer.

Warehouse details and signature. Among the most important and frequent requirements are details of the warehouse where the underlying goods are stored. These requirements should be designed to allow lenders or other actors in the transaction chain to quickly and easily determine or verify where the goods are stored, particularly at the time of a pledge agreement, the loan maturity, the sale of goods or liquidation/execution proceedings. It may be required to include the warehouse's address, its name, the name of its owner company or authorized individual, its licence number or other identification information consistent with national business law norms. The United States of America, Uganda, Ukraine, Tanzania, the Philippines, Indonesia, Brazil and Argentina require, as a minimum, the location of the warehouse. In addition to the warehouse's name and address, Kazakhstan's Law on Grain requires the tax identification number of the warehouse.²³⁶ Turkey requires the warehouse's licence number.²³⁷

Depositor details. Requirements of the depositor's identification details serve to protect the depositor's rights to the stored goods. They also protect the rights of lenders, to the extent that the underlying stored goods are actually owned by a prospective loan applicant and can be used as low-risk collateral. But a depositor's details are not always required and are often not considered strictly necessary if there is strong certainty that the holder of a receipt or pledge right will be able to recover on stored goods.

Civil law countries do tend to require information about the depositor. But in common law-influenced countries such as the United States of America, Uganda, Tanzania and the Philippines, information about the depositor is functionally related to provisions on negotiation and transfer.²³⁸ This has taken the form of a required statement of whether the goods received will be delivered to the bearer of the receipt, a specified

person or to a specified person or his order. In systems that are designed to facilitate secondary receipts trading markets, information about the original depositor may be less consequential.

Serial numbering and date of issuance.

Serial numbers are commonly used to minimize document fraud and aid record-keeping and auditing. A receipt serial number is closely linked with mandatory obligations for warehouses to keep records on the receipts that they issue. A serial number also allows a receipt holder to easily check with the warehouse to assure that his receipt matches the version issued by the warehouse and therefore is not likely to have been doctored. Numbering may be determined at the national or the warehouse level if there is no national-level registry. A requirement to print the date of issuance serves a similar function if taken in conjunction with warehouse record-keeping requirements. For example, Argentina's legislation does not require a serial number but does require that the receipt's date of issuance is included.²³⁹

Storage fees, liens and advances due. For lenders to accurately value pledged collateral, they must fully understand any charges or fees that will diminish the overall recovery in the event of debtor default. This is particularly important because many legal systems prioritize satisfying taxes and warehouse storage fees before a creditor may recover. Therefore, warehouse receipt legislation commonly requires that any encumbrances or fees that would diminish the value of the receipt's use as collateral are clearly stated. During the warehouse licensing process, legislation in many countries requires the potential warehouse operator to submit the planned warehouse charges to the licensing authority. For example in the Philippines, in order to apply for a licence to operate a grain warehouse, applicants must submit a schedule of storage fees to be charged to the National Food Authority.²⁴⁰ Similarly in France, charges for storage and related services must be fixed

²³⁶ Art. 39(3), Law on Grain. Kazakhstan.

²³⁷ Art. 22, Regulation of Agricultural Products Licensed Warehousing, 2013. Turkey.

²³⁸ U.C.C. 7-202 (2). US; Sec. 40(3), Warehouse Receipt System Act, 2006. Uganda; Sec. 33(1), Warehouse Receipts Act, 2005. Tanzania; Sec. 2 Warehouse Receipts Act, 1912. The Philippines.

²³⁹ Art. 6, Ley 9643. Argentina.

²⁴⁰ Sec. 2(G)(j), Reg. XV, Revised Rules and Regulations of the NFA on Grains Business, 2006. The Philippines.

and filed with the prefect before a warehouse opens.²⁴¹

Description of underlying goods. In any warehouse receipt system, one of the most important pieces of information is the description of the underlying stored goods. All warehouse receipts systems include a requirement to describe the underlying goods in some way. The description must be of every aspect necessary to identify the stored goods or, if fungible, goods of equivalent quality, quantity or value. Common requirements are product characteristics, quality, quantity, laboratory testing and estimated monetary value of the goods at the time stored. In the Philippines, grain warehouses use different coloured form receipts for different qualities and quantities of agricultural products.²⁴² This classification makes the receipts easily specifiable.

Insurance. Insurance increases lender and depositor confidence in the warehouse system. If stored goods are insured to sufficient levels, creditors will more likely extend loans at reasonable rates, backed by the stored collateral. Accordingly, several countries have chosen to include mandatory insurance requirements for stored goods, with a corresponding requirement that the insurance be acknowledged on the receipt itself.

Maturity date of the loan. Agricultural products have a limited warehouse storage life and gradually deteriorate in quality and, therefore, value over time. For fungible goods that are stored together with other goods of the same quality and characteristics, the maturity date is an important cut-off date for when the value of stored goods hypothetically drops below a certain level. The maturity date is important for lenders because it affects the term length for any loans granted and backed by stored collateral. However, several countries' legislation does not include an explicit requirement to state the maturity date. In practice, this choice may be supplemented by a statutory maximum length of duration of

warehouse receipts, by implicit reference in the description of goods or by commercial practice and expectations regarding deterioration of stored goods.

Prohibition from issuing receipts for self-owned goods. Beyond mandatory minimum content, a legal framework for warehouse receipts may contain additional prohibitions or rules. One important topic that is sometimes explicitly treated in legislation is whether warehouses may issue warehouse receipts for stored goods owned by the warehouse keeper. If warehouse managers are permitted to issue receipts based on their owned goods, access to credit for warehouses and development of the warehouse industry can be facilitated. However, without adequate safeguards and inspections, there is an elevated risk of warehouse fraud.

To address this risk, country legislation typically pursues one of three possible options. First, a legal framework may outright prohibit warehouses from issuing receipts for self-owned goods. Argentina has taken this approach. It is forbidden for authorized warehouse companies to purchase or sell agricultural products of the same nature as those referred to in the certificates of deposit and warrants that they issue; violation of this rule is penalized by revoking authorization.²⁴³ If warehouse managers cannot purchase or sell these goods, it follows that they may not own such goods and issue receipts for them.

Second, a country may require that receipts be marked explicitly in cases where the receipt covers goods owned by the warehouse that issued the receipt, as is the case in Uganda, Tanzania and the United States of America.²⁴⁴ Lastly, a country might require additional inspections in these cases to ensure that the covered goods are actually present. While not explicitly found in the countries studied in Part III, additional inspections might take the form of supplementary inspections such as those provided for Quedancor guaranteed loans in the Philippines.²⁴⁵

²⁴¹ Arts. L522-18 and L522-19, C. comm. France.

²⁴² See Sec. 3, Reg. VIII, Revised Rules and Regulations of the NFA on Grains Business, 2006. The Philippines.

²⁴³ Art. 3, Ley 9643. Argentina.

²⁴⁴ Sec. 40(3), Warehouse Receipt System Act, 2006. Uganda; Sec. 33(1), Warehouse Receipts Act, 2005. Tanzania; U.C.C. 7-202 (2). US.

²⁴⁵ Coulter & Shepherd, 1995, p. 52.

Paper and electronic receipts. Warehouse receipts have been traditionally issued and traded in paper form. This format, as for any other document of title, runs the risk of forgery or fraud. One way to address this risk is to use serial numbering. Another way is to mandate that paper receipts be issued on specially distributed paper, as tear-outs from books of special paper or with specific security features. Or, receipts may only be printed by specifically approved printers. In Uganda for example, a receipt can only be printed by a printer approved by the Uganda Warehouse Receipt System Authority and be supplied exclusively by the authority.²⁴⁶ In the Philippines, grain warehouse receipts are only printed on serial-numbered, color-coded paper that corresponds to specific types, qualities, and quantities of stored agricultural products.²⁴⁷

As computer technology becomes more affordable and widespread, the current trend in some countries is towards introducing electronic receipts, provided that the country has the necessary facilities. Electronic warehouse receipts are electronically issued data records that contain the information required for warehouse receipts. If legislation provides that they are legally equivalent to paper receipts, they can be used in the same way, for example as collateral for creditors. Electronic warehouse receipts have been introduced in several countries around the world beginning around 2000. Legal provisions for electronic warehouse receipts have been introduced in the following countries among others, even if they are not yet fully operational: the United States of America (2000), Brazil (2004), Turkey (2005), Indonesia (2006), Uganda (2006), India (2007) and Kazakhstan (2012).²⁴⁸ In Ukraine, draft regulations

on electronic warehouse receipts have recently been considered.²⁴⁹

There are several advantages and challenges to introducing electronic receipts. The introduction of an electronic receipt format can facilitate the negotiation and transfer of receipts, allowing for an instant transfer of ownership as they do not need to be physically handed over, which also reduces transfer costs. They can enhance the marketability and trade of receipts, particularly where the warehouse receipt system is closely linked to an exchange. They also render superfluous the handling, storage and related costs of paper receipts. A system for electronic receipts offers efficient collateral management for financial institutions. It strengthens system transparency as lenders and other users can monitor the receipts from a computer. Another important advantage of a system for electronic warehouse receipts is that it reduces documentary fraud, i.e. presenting false documents to obtain grain.²⁵⁰

But the introduction of electronic warehouse receipts requires sufficient funding to adequately develop a technical system to issue and trade electronic receipts. Issuing and transferring receipts could be done by the private sector or through government institutions. To introduce electronic receipts, warehouses also need financial resources, and users must have access to the electronic system. There are many countries where these preconditions are currently not met, so electronic warehouse receipts are only used in a few places. In light of the start-up costs, legislative drafters can proceed in steps, incrementally introducing electronic components to the warehouse receipt system. For example, although warehouse receipts in Brazil are initially issued in duplicate paper form, the agricultural certificate of deposit (CDA) and agricultural warrant (WA) proceed in electronic format after registration.²⁵¹

²⁴⁶ Sec. 40(1)-(2), Warehouse Receipt System Act, 2006; Sec. 28(2) Warehouse Receipt System Regulations, 2007. Uganda.

²⁴⁷ Sec. 14, Presidential Decree 4, 1972, as amended. The Philippines.

²⁴⁸ 7 U.S.C. §250 (e)(2), (7). US; Art. 3, Law 11076, 2004. Brazil; Art. 16, Law on Licensed Warehousing, 2005. Turkey; Art. 2, Law No. 9, 2006. Indonesia; Sec. 40(1) and (2) Warehouse Receipt System Act, 2006 and Sec. 28(2) Warehouse Receipt System Regulations, 2007. Uganda; Sec. 2(u), Warehousing Act, 2007. India; Regulations on using electronic grain receipts, 2012. Kazakhstan.

²⁴⁹ See generally, Draft Law on amending certain laws regarding guarantee fund performance, 2013. Ukraine.

²⁵⁰ FAO, 2009, p. 26.

²⁵¹ See Art. 3, Law 11076, 2004. Brazil.

If a country decides to introduce electronic warehouse receipts, there are several more considerations. For example, will electronic receipts be introduced for all commodities that paper receipts were issued for, including fungible commodities? Or will they be limited – possibly initially – to specific agricultural commodities? Further, introducing electronic receipts in domestic legislation requires legislators to define the technical processes and procedures for issuing and trading them. Existing provisions that are designed for paper receipts could obstruct the introduction of electronic receipts, and amendments would be necessary to achieve their functional equivalence. For example, an important challenge to ensure the integrity of electronic receipts is creating a unique electronic equivalent. The rules for creating, transferring and enforcing paper receipts cannot simply be extended to electronic records, but additional requirements and standards need to be established.

It is also important to clarify that the introduction of electronic warehouse receipts is not meant to impact substantive rules, unless they are simultaneously subjected to legislative reform. Introducing electronic receipts may necessitate amendments to existing legislation other than the warehouse receipt law, if such current legislation is applicable to warehouse receipts and stands in contradiction to parts of the new legislation introducing electronic receipts. For example, in Ukraine, a draft bill was put forward by the Ministry of Agriculture for consideration in June 2013 that would allow for electronic warehouse receipts.²⁵² This 2013 draft law proposed to amend the Civil Code of Ukraine, the Law on Grain and the Law on Certificates to allow for the introduction and growth of an electronic warehouse receipt system.²⁵³

Moreover, if a country's overall legal framework has not yet been adapted to electronic commerce and does not provide for electronic

documents of title, the introduction of electronic receipts may pose several additional questions. New legal issues not regulated under a paper receipt system will need to be regulated, such as the requirements, rules and procedures for the third-party providers operating an electronic receipt system and their liability.

One of the first countries to introduce electronic warehouse receipts in legislation was the United States. In 2000, the USWA was revised to allow the voluntary use of electronic warehouse receipts and to provide regulatory authority to establish rules for the providers operating an electronic receipt system, including the requirements for their approval.²⁵⁴

At the state level, in 2003 the UCC was revised to recognize electronic documents of title.²⁵⁵ Today, revised Article 7 of the UCC – Warehouse Receipts, Bills of Lading and Other Documents of Title – provides a framework for both electronic and paper documents of title and leaves the choice between paper and electronic receipts.

The introduction of electronic documents of title at the state level necessitated amendments to several provisions of the UCC. For example, an amendment was needed to recognize that a document's required signature can be satisfied with an electronic one. Furthermore, as the transfer of electronic documents is different from that of paper documents, a system for the transfer of electronic documents of title had to be established. The transfer of paper documents occurs through transferring the possession of the document, and more precisely through the delivery, endorsement and possession of the negotiable document of title. As an electronic record cannot be handed over, the concept of "control" of electronic documents of title has been incorporated in UCC Article 7–106 to substitute for "possession."²⁵⁶ According to this article, a person has control over an electronic document of title "if a system employed for evidencing the transfer of interests in the

²⁵² Draft Law on amending certain laws regarding guarantee fund performance, 2013. Ukraine.

²⁵³ *Ibid.*, Arts. 1(1) (proposed amendments to Art. 961 of the Civil Code), 1(2) (proposed amendments to Art. 2 of the Law on Certificates) and 1(3)(6) (relevant proposed amendments to Art. 37 of the Law on Grain). Ukraine.

²⁵⁴ 7 U.S.C. §250 (e)(2) and (7). US.

²⁵⁵ See Uniform Law Commission, U.C.C. Article 7, Documents of Title, 2003, p. 1; New York City Bar, 2011, p. 1 et seq.

²⁵⁶ Para. 3, §16, Uniform Electronic Transactions Act (UETA), 1999. US.

electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.”²⁵⁷ UCC Article 7–106 sets out requirements for creating, storing and assigning the electronic documents of title. New provisions were included that require, among others, electronic receipts to contain several additional details more than paper receipts.²⁵⁸

Kazakhstan recently introduced electronic receipts. With the aim to allow for easier issuance and transfer of warehouse receipts, a system for electronic warehouse receipts was created by regulations in 2012.²⁵⁹ The system for electronic receipts has some additional requirements compared with paper receipts. In particular, and differently from the system in the United States, issuing, endorsing and pledging of electronic receipts occurs through a centralized state register of electronic receipts. While paper receipts are not centrally registered outside of the issuing warehouse,²⁶⁰ grain warehouses must register the records in the centralized state register of electronic grain receipts and if issuing electronic receipts, must update the central state electronic registry.²⁶¹ Endorsing and pledging electronic receipts as collateral require information similar to that required for paper receipts, but must be done through online forms at the state grain warehouse receipt register website.²⁶²

At the international level, the United Nations Commission on International Trade Law (UNCITRAL) is currently developing draft provisions on electronic transferable records that are aimed at providing legislative guidance to countries.²⁶³ These provisions could further

guide countries in the design of their domestic provisions on a system for electronic warehouse receipts, as well as for the various considerations for the introduction and regulation of electronic documents and warehouse receipts in particular.

Registration of receipts. All warehouse receipt systems reviewed in this study require that individual warehouses keep detailed records on the issuance of receipts. Records at the warehouse level help to minimize document fraud at the local level. Additionally, the majority approach in modern legislation is to include at least some form of government registration in the warehouse receipt system. Like other government registration systems such as land title registrars, warehouse receipt registration serves the transparency and publicity of the receipt system. It can increase legal certainty and protect the rights of legitimate receipt or pledge holders.

A system for receipt registration does entail costs at the institutional level. The functions of registering and maintaining records may be allocated to a new or to an existing body; in both cases, there are costs associated with hiring and training new staff and designing the registration system including the database and electronic support. If not designed optimally, the receipt registration system can impede fluid issuing and trading of receipts. To avoid this, the process for registration must not be unduly costly, complicated or time consuming for the desired warehouse receipt system users. Special considerations must be made in situations where there are high rates of illiteracy among the desired users.

When deciding whether to include a requirement for centralized registration of warehouse receipts, there are at least three important preliminary questions to consider. The first is which transactions or events within the warehouse receipt system must be registered. Several types of transactions or events occur within warehouse receipt systems: the first issuance of the receipt, subsequent transfers and endorsements, pledging receipts as collateral for a loan, loan repayment, partial or full settlement and release

²⁵⁷ This definition is adapted from the UETA § 16(b) on transferable records and from U.C.C. § 9-105 on the control of electronic chattel paper. See New York City Bar, 2011, p. 4.

²⁵⁸ See USDA, 2013a.

²⁵⁹ Regulations on using electronic grain receipts, 2012. Kazakhstan.

²⁶⁰ See Art. 6, Regulations on approval of the rules of issuance, circulation and redemption of grain receipts, 2011. Kazakhstan.

²⁶¹ Arts. 2(8) and 7, Regulations on using electronic grain receipts, 2012. Kazakhstan.

²⁶² See generally, Regulations on using electronic grain receipts, 2012. Kazakhstan.

²⁶³ See homepage of UNCITRAL, Working Group IV on Electronic Commerce, at www.uncitral.org.

Box 6: Key elements for regulating warehouse receipt registration*Institutional matters*

- Designation of registrar institution
- Functions, powers and mandate
- Funding
- Organizational design

Procedural matters

- Required events to register
- Effect of registration
- Who must register
- Electronic vs. paper procedures
- Fees
- Timelines
- Access to records

of the underlying goods, cancellation of the receipt and loss or destruction and subsequent reissuance of the receipt. Legislation may require that any or all of these events be centrally registered. In fact, some applicable registration requirements can be included in the general legal framework, such as the legal framework for pledges.

For example, centralized registration in the United States of America focuses on protecting creditor interests, which derives from broader requirements within commercial law and the law of pledges (secured transactions). Although the issuance of paper receipts does not need to be centrally registered in many cases, there is a provision for central registration of secured transactions (pledging the receipt as collateral).

Ukraine has taken a different approach and requires that nearly all events involving the certified warehouse must be recorded in the centralized registry for grain warehouse receipts maintained by the State Registrar, within the Ministry of Agrarian Policy and Food. The central registry must be updated when a new warehouse receipt is issued; previously issued warehouse receipts are cancelled; warehouse receipts are lost; a simple warehouse receipt is duplicated; and errors in a warehouse receipt are detected. Transfers of receipts do not need to be recorded in the registry. The central registry

is electronically linked with individual registries at each warehouse.²⁶⁴ Similarly, Uganda's warehouse receipts legislation created a central registry system – operated by the Uganda Warehouse Receipt System Authority with the Secretary to the Authority being the Registrar – where nearly all transactions must be recorded.²⁶⁵ Any warehouse receipt issued, negotiated, pledged or cancelled must be delivered to the registrar and added to the central registry within 14 days of the issuance or negotiation.²⁶⁶ Indonesia has instituted similarly comprehensive central registration requirements.²⁶⁷

A legal framework can prescribe different procedural requirements for paper and electronic receipts, if applicable. Because of the nature of issuing and transferring electronic receipts, centralized registration tends to be easier to implement. For example in the United States, the issuance of paper receipts does not need to be centrally registered, but electronic receipts issued by state or federally regulated warehouses must be.²⁶⁸ Turkey and Kazakhstan follow a similar approach: electronic receipt issuances are centrally recorded but paper receipt issuances are not.²⁶⁹ Most countries foresee at least some form of central registration for the warehouse receipt system.²⁷⁰

The second question to ask when deciding to use a centralized registration of warehouse receipts is where the administrative burden for registering each event should fall. For example, if a legal framework requires that each receipt issuance must be centrally registered, it might make sense to place the duty of registration upon the issuing warehouse because of technical capacity and the possibility of integrating registration with electronic record-keeping. Similar reasons

²⁶⁴ See Sec. 8 et seq., Law on Grain. Ukraine.

²⁶⁵ Sec. 42(1) and (2), Warehouse Receipt System Act, 2006. Uganda.

²⁶⁶ Ibid., Sec. 42(3)-(5); Sec. 48(1), Warehouse Receipt System Regulations, 2007. Uganda.

²⁶⁷ Art. 8(3), Law No. 9, 2006. Indonesia.

²⁶⁸ 7 U.S.C. §250 (e)(2) and (7). US.

²⁶⁹ Merkezi Kayit Kuruluşu A.Ş. has been authorized as the "Electronic Registry Agency" for record-keeping of the electronic warehouse receipts pursuant to the Regulation on Electronic Warehouse Receipts. Turkey; Art. 2(8), Regulations on using electronic grain receipts, 2012. Kazakhstan.

²⁷⁰ Among the reviewed countries, e.g. Brazil, Indonesia, Kazakhstan, Turkey, Uganda, Ukraine and the US.

apply for all transactions that take place at a warehouse, such as settlement/cancellation of receipts and reissuance of receipts. However, more difficult issues arise regarding events that do not take place at a warehouse, such as who should register a pledge (creditor or debtor) or who should register a receipt transfer and endorsement (transferor or transferee). Such questions should be informed by, and if possible, should be consistent with common commercial practices and the broader legal framework for pledges and transferring movable property.

The third question to consider is whether registration of an event or transaction is required for the event to take legal effect, or whether registration merely serves as evidence of the transaction. In either case, centralized registration serves an important notice and identification function for all parties involved in the warehouse receipt system. A key element to be considered in legislation or regulations is which parties within the warehouse receipt system have access to registrar records. For example, a potential lender will wish to check whether the receipt has been pledged before for a prior loan and if the receipt is still valid. Likewise, a potential transferee will wish to check that the potential transferor is capable of transferring the rights advertised.

A number of these questions are different for electronic warehouse receipts. Their register is an electronic database. Over time, the registration of electronic receipts may require less institutional efforts and costs if the registry is designed so that events requiring registration are automatically entered into the centralized database. Furthermore, an automatic updating of events in the centralized registry can happen without delay and with a minimum of personnel and costs, which are only required for maintaining the electronic system. Details depend on the specific design of the electronic registry system.

Negotiation and transfer of warehouse receipts

Once a warehouse receipt is issued to a depositor, the depositor may wish to sell his or her rights to the underlying goods by selling the receipt, or to pledge the receipt in order to obtain a loan. Generally, warehouse receipts

are tradable only if made out as negotiable,²⁷¹ and endorsement of a non-negotiable receipt does not make it negotiable or give any rights to the endorsee.²⁷² But depending on the legal system of a country, typically both negotiable and non-negotiable warehouse receipts can be used as collateral. Different requirements may apply for each case. For example, in the American system, if a depositor wants to use a negotiable warehouse receipt as collateral, a security interest over it is perfected after the creditor files a financing statement that gives notice of a claim over the receipt.²⁷³ However, in the case of non-negotiable warehouse receipts, either the warehouse must issue the receipt in the name of the creditor, the creditor must notify the warehouse of the claim or the creditor must file a separate claim on the underlying goods.²⁷⁴

There is an increasing trend towards creating systems where receipts can be freely pledged and traded, which creates a secondary market and improves the liquidity and attractiveness of receipts as collateral for lenders and instrument traders. The mechanics of negotiation and transfer of receipts should be outlined in the legal framework for warehouse receipts, either in a specific law on warehouse receipts or in the general legal framework for instrument negotiation or endorsement of documents of title. The regulatory goal would be to provide minimal technical and financial barriers upon transfer.

There is an important distinction between how single and double receipts are transferred and circulated within the system. In double warehouse receipt systems, it is the norm to explicitly allow separate trading (or endorsement) of the two parts of the receipt – the pledge right and the ownership right to the goods. France provides a representative example. According to the French Commercial Code, the endorsement of a warrant separated from the receipt constitutes a pledge on the merchandise in favour of the transferee of the warrant. The

²⁷¹ For example, U.C.C. Article 3. US. See also, Kansas City Board of Trade, 2013.

²⁷² For example, U.C.C. 7-501(c). US.

²⁷³ U.C.C. 9-312(a). US.

²⁷⁴ Ibid., 9-312(d).

endorsement of a receipt transfers the right to dispose of the merchandise. If the receipt is transferred without the warrant, the transferee is liable for paying the debt secured by the warrant or shall allow the debt to be settled from the proceeds of the merchandise's sale.²⁷⁵

Brazil's recently instituted system for double warehouse receipts illustrates how receipts may circulate in a market-oriented system. After registration, the agricultural certificate of deposit (CDA) and warrant (WA) are tradable – separately and together – on markets and over the counter, where transactions are updated electronically by the registration entity. Conceptually, the Brazilian producer has three main options: (1) to sell both the CDA and WA at the same time (selling all rights to the goods); (2) to pledge the goods as collateral for a loan (sell WA only); and (3) sell the WA first and then the CDA later. Although the CDA and WA may be traded separately, the goods will only be released once the CDA and WA are reunited, as discussed further in Section 4.6 on settlement and release of stored goods. Notably, fluid transfer of receipts within the system is facilitated by an explicit provision that negotiations on CDAs and WAs are tax exempt.²⁷⁶

When the two parts can circulate separately, legislation typically requires that certain minimum information be recorded on both parts of the receipt, or recorded electronically if applicable. These information requirements are designed to inform potential creditors or other transferees of the rights and encumbrances being transferred. For example in Kazakhstan, when separating the pledge certificate from the warehouse certificate (such as when pledging collateral for a loan), the warehouse certificate must be marked with the name and address of the transferee, the content of the obligation secured by collateral, its size, its interest rate, the signature of the transferee and the date of separation of the pledge certificate from the warehouse certificate. The pledge certificate must have similar annotations except that information about the transferee should be replaced with information about the transferor.²⁷⁷

Argentina has similar information requirements. The endorsement must contain the date of endorsement; name, address and signature of endorser and endorsee; amount lent; maturity date; and place agreed for payment. When traded separately, the following details of the negotiation of the warrant will be entered on the back of the certificate of deposit: the credit amount, name and address of the lender, expiration date and place of payment. The same data must be entered in the issuing warehouse's registry book for the first negotiation of the warrant.²⁷⁸

In single receipt systems, there is a key distinction between negotiable and non-negotiable receipts. Most single receipt systems provide for both types of documents; such is the case in Turkey, Uganda, India, Tanzania, the Philippines and the United States of America.²⁷⁹ For example, Uganda's specific law on warehouse receipts provides for both negotiable and non-negotiable ones. A negotiable receipt is defined as "a warehouse receipt in which it is stated that the goods received will be delivered to the bearer or to the order of a named person". A non-negotiable receipt is a "warehouse receipt issued to the bearer or to the order of a specified person and marked non-negotiable on the face of it".²⁸⁰ It is typical – in each of the single receipt systems studied in Part III – to require that non-negotiable receipts be marked as non-negotiable to provide notice to involved parties that rights associated with the receipt cannot be transferred by negotiation.²⁸¹

Settlement and release of stored goods

The last step is that the holder of a warehouse receipt presents it to the warehouse to retrieve the stored goods. A legal framework should explicitly outline the conditions of stored goods being released to protect the rights of legitimate receipt holders and to ensure that the stored

²⁷⁵ Art. L522-28, C. comm. France.

²⁷⁶ See Arts. 16-18, Law 11076, 2004. Brazil.

²⁷⁷ Art. 39(5) and (6), Law on Grain. Kazakhstan.

²⁷⁸ Art. 10 et seq., Ley 9643. Argentina.

²⁷⁹ Art. 22, Regulation of Agricultural Products Licenced Warehousing, 2013. Turkey; Sec. 2(1), Warehouse Receipt System Act, 2006. Uganda; Sec. 2(n), Warehousing Act, 2007. India; Sec. 34(1) and 35, Warehouse Receipts Act, 2005. Tanzania; Sec. 37-39, Warehouse Receipts Act, 1912. The Philippines; 7 C.F.R. 735.300(a)(1). US.

²⁸⁰ Sec. 2(1), Warehouse Receipt System Act, 2006. Uganda.

²⁸¹ See e.g., Sec. 12(2), Warehousing Act, 2007. India.

goods are not released before the request of the legitimate receipt holder.

In a single receipt system, the conditions for when stored goods can be released tend to be straightforward. In general, goods will be released upon surrendering a valid receipt and satisfying all storage charges and taxes. For double receipt systems, requirements are similar, but a few additional details are included to deal with cases where the holder of one of the receipt parts wants to release the goods. Ukraine provides a good example where requirements are explicitly provided for both single and double receipts. Certified warehouses must release stored goods upon the demand of the warehouse receipt holder, even if the storage period has not expired, upon presentation and subsequent transfer of a simple warehouse certificate or both parts if a double (repaid if pledged). The warehouse's registry for warehouse receipts must be updated accordingly.²⁸² As is the norm in double receipt systems, even if not in possession of the pledge certificate, the holder of the depot certificate may pay the warehouse the money due under the loan on the pledge certificate to retrieve the grain.²⁸³

It is frequently an explicit obligation for warehouses to destroy or cancel surrendered receipts to minimize document fraud or transactions on goods no longer stored in the warehouse. This should be accompanied by a requirement to record the cancellation in the warehouse's paper or electronic record books. For example in Ukraine, when the stored goods are released by the warehouse, the relevant warehouse receipt document(s) and register must be annotated with notice of the cancellation.²⁸⁴

Most of the single and double receipt systems analysed in this study provide for an explicit warehouse lien upon stored goods so that the warehouses can recover storage charges by withholding or selling a portion of the goods. Although most legal requirements in warehouse

receipt legislation in this study tend to be designed to protect the rights of depositors and creditors, the warehouse lien is an important measure to protect the rights of warehouses from unfair practices or non-payment by the other users of the warehouse receipt system. For example in the Philippines, a warehouse operator has a lien upon the deposited goods for all lawful charges for their storage and preservation and for money advanced, interest, insurance, transportation, labour, weighing and other related charges, as well as expenses for notice and advertisements of sale. Subsequently, the warehouse manager can sell the goods at auction to satisfy any valid claim after complying with public notice requirements. The balance, if any, shall be delivered to the owner of the goods.²⁸⁵

One final issue is whether to allow partial settlement or release of only a portion of the stored goods covered by a receipt. In general, partial release poses no additional system risks as long as normal procedures are followed to cancel original receipts or otherwise provide notice to potential transferees. For example in Tanzania, a rare common law double-receipt system allows for partial delivery of goods underlying a negotiable warehouse receipt. Upon their partial delivery, a warehouse operator must either take and cancel the initial receipt and issue a new receipt for the remaining goods or conspicuously place a statement on the original receipt telling what goods and packages have been delivered.²⁸⁶

Execution and priority of obligations

In a system for warehouse receipt finance, a depositor may pledge the receipt as collateral to obtain a loan from a lender. The loan should be paid back, and the depositor or another transferee may present the receipt to retrieve the stored goods in due course. However, if the depositor does not pay back the loan, the creditor must follow a legal procedure to recover on it from the underlying stored goods. Therefore, along with adequate warehouse performance guarantees, efficient procedures for execution and recovery are instrumental to ensure that

²⁸² Art. 16, Law on Certificates. Ukraine.

²⁸³ Art. 39, Law on Grain. Ukraine.

²⁸⁴ See *ibid.*, Art. 46.

²⁸⁵ Sec. 33, Warehouse Receipts Act, 1912. The Philippines.

²⁸⁶ Sec. 46(1), Warehouse Receipts Act, 2005. Tanzania.

warehouse receipts are viewed as low-risk collateral and agricultural finance is available at affordable rates. The primary objective should be that, in the event of debtor default, a creditor may quickly recover an expected value by selling the underlying stored goods. And a legal framework should aim to protect depositors from unfair creditor practices by providing sufficient public notice of any sale or auction.

Depending on how court-led enforcement takes place in a particular country, lenders can be effectively protected by the possibility of extra-judicial enforcement. The lender would not need to file a court action to recover on the debt where this is time consuming. Among the countries studied in Part III, extra-judicial enforcement mechanisms are provided in Argentina, Brazil, France, Indonesia, Kazakhstan, Ukraine and the United States of America.²⁸⁷ These extra-judicial enforcement mechanisms tend to have some basic common features. Commonly, if a debtor defaults, the lender can file for a public auction of the underlying stored goods after a set notice period that varies between countries but usually does not exceed 14 days. Prior to the auction, the debtor and the public must be notified. The receipt holder has a privileged position for recovery from the proceeds of the auction, after satisfying government taxes, auction fees and the warehouse lien.

Kazakhstan's system for recovery illustrates good practices with respect to protecting the rights of creditors and depositors. To protect creditors, Kazakhstan's Law on Grain provides for an out-of-court procedure whereby a lender can recover on a defaulted loan based on a grain warehouse receipt. This out-of-court procedure requires the creditor to give evidence of default to the warehouse. Then the public and holder of the warehouse certificate must be notified of the loan default and after a 14-day delay, the underlying grain will be auctioned off to the highest bidder. To protect depositors, they must

be notified of the auction. The auction proceeds are used to satisfy the debtor's obligations according to the following priority order: the costs associated with the auction; warehouse storage fees; the loan amount due to the holder of the pledge certificate; and lastly the holder of the warehouse certificate.²⁸⁸

Similarly in Argentina, in case of debtor default, the creditor who holds the warrant petitions the warehouse for a public auction of the underlying stored goods within ten days from the date of the warrant's maturity. The debtor must be notified by certified mail within two days of this petition. At least ten days prior to the auction, notice must be published in two local newspapers stating the products for sale, the date of the initial warrant negotiation and the original owner's name. After auction, taxes and unpaid storage fees are paid first.²⁸⁹ If the proceeds from the auction are still not sufficient to satisfy the debt owed, the creditor will hold the right as a general creditor against the depositor and subsequent title holders.²⁹⁰ The creditor that holds the warrant for stored goods has a privileged position over any other creditor of the debtor, after deduction of the auction expenses.²⁹¹

In France, in the event that the underlying debt is not paid at maturity date, the bearer of a warrant separated from the receipt can – eight days after notice and without judiciary formality – initiate the public sale of the stored merchandise by public officials in accordance with the applicable provisions for public wholesale auctions. The same applies to an original signatory of the warrant who has paid the bearer and can initiate the sale of the merchandise against the receipt holder. The creditor on the pledged warrant is satisfied first without any deductions except for taxes, storage and sales expenses, directly and without judiciary formalities. Warrant holders have no right of action against the debtor or the endorser until the pledged goods are sold and if the proceeds are insufficient to cover the debt. The right of action against endorsers is forfeited if

²⁸⁷ See Arts. 16 and 17, Ley 9643. Argentina; Art. 1(4), Law 11076, 2004. Brazil; Art. L522-31, C. comm. France; Art. 16 (1), Law No. 9, 2006. Indonesia; Art. 41 and 42, Law on Grain. Kazakhstan; Art. 39, Law on Grain. Ukraine; U.C.C. 9-322(a). US; see also, Uniform Law Commission, U.C.C. Article 9, Secured Transactions, 1998.

²⁸⁸ Arts. 41 and 42, Law on Grain. Kazakhstan.

²⁸⁹ Arts. 16, 17, 25 and 26, Ley 9643. Argentina.

²⁹⁰ See Gerber, 1969, p. 694.

²⁹¹ Art. 22, Ley 9643. Argentina.

Box 7: Execution and priority ranking in Ethiopia

Under Ethiopian legislation, if the debtor defaults upon maturity of the loan, the creditor must serve due notice to the debtor. In the case of negotiable warehouse receipts, the creditor can then sell the goods covered by the warehouse receipt 15 days after the payment's due date specified in the notice. In the case of non-negotiable warehouse receipts, if no objections follow the notice or if objections have been dismissed, the creditor may proceed to sell the goods via public auction or private contract within eight days from the notice.

Electronic warehouse receipts issued by the Ethiopian Commodity Exchange (ECX) could be subject to bank foreclosure processes if the creditor is a banking institution. Under these processes, the creditor gives the debtor five-day legal notice of intention to foreclose and sell the pledged commodity one day after the repayment date. Failure to pay within the period specified in the notice signifies that the bank would have authority to sell the electronic warehouse receipts 15 days after the payment date in the notice. The bank must inform the ECX for the central depository to allow selling or withdrawing of the goods corresponding to the electronic warehouse receipt. The electronic warehouse receipt expiry date will be extended by 40 days if foreclosure is performed by a bank.

the public sale does not occur within one month after protest.²⁹²

Under Brazilian legislation, the holder of a warrant securing a loan may foreclose on stored goods through an out-of-court procedure and public auction.²⁹³ A notice procedure is not specified by the legislation. If the loan secured by an agricultural warrant has not been repaid at the time of maturity, the underlying goods may be immediately auctioned to satisfy the debt, subject to outstanding taxes and storage charges.²⁹⁴ Like the other countries, the holder of the warrant enjoys a privileged position for recovery from the proceeds of the auction, subject to initial satisfaction of government taxes, auction fees and the warehouse lien.²⁹⁵

An interesting variation can be found in the Ethiopian legislation, where electronic warehouse receipts issued by the commodity exchange could be subject to bank foreclosure processes if the creditor is a banking institution (see Box 7).

A key protection for creditors is the privileged position enjoyed by receipt holders in the order of recovery from sale proceeds. For creditors to be assured that they will recover an expected amount in the event of debtor default, it is essential that receipt holders have a priority position over other potential claimants (such as the debtor or warehouse), with the exception of

clearly predefined storage charges and taxes.

Historically, the Turkish legal framework for warehouse receipts does not give a priority position to the receipt holder over other claimants, and commentators have noted that it is one of its major shortcomings.²⁹⁶

Offences and penalties

The determination of offences and penalties in the law is an essential tool to ensure compliance with warehouse receipt legislation and to deter participants in the system from violating its provisions. The warehouse receipt legislation will clearly define offences under the law and their corresponding penalties, which may take the form of a monetary fine and/or imprisonment. When determining what is an offence, it must also be determined what is a criminal offence and an administrative offence. This again may be predetermined by and must be consistent with the country's legislation, particularly the criminal code. Furthermore, in case a warehouse violates the provisions of the warehouse receipt legislation and to protect warehouse system participants from further violations, the legislation can foresee the possibility to temporarily or permanently prohibit the warehouse operator from conducting business, by suspending or revoking the licence or other measures. While penalties included in other legislation, in particular the criminal code, can complementarily apply, offences and penalties specific for the warehouse receipt system are typically regulated in the warehouse receipt law.

²⁹² Arts. L522-31, L522-32 and L522-33, C. comm. France.

²⁹³ Art. 23, Decree 1102, 1903. Brazil.

²⁹⁴ Art. 17, Law 11076, 2004. Brazil.

²⁹⁵ Art. 26, Decree 1102, 1903. Brazil.

²⁹⁶ See FAO, 2009, p. 27.

Offences. As a general notion, legal clarity and predictability of sanctioning require that offences must be clearly defined so that any person can easily predict what conduct will be punished. Within a warehouse receipt system, legislators will usually pay special attention to protecting the rights of depositors, creditors and other buyers of warehouse receipts, as well as the legal transactions of receipts in general, and they will usually penalize fraudulent conduct of the warehouse operator or his or her personnel for violations with respect to warehouse receipts and the underlying stored commodities.

For protecting the rights of depositors and receipt holders concerning the goods stored in a licenced warehouse, legislation will typically define offences related to warehousing committed by a warehouse operator. These offences usually include the following:

- operating a warehouse receiving merchandise for storage against which negotiable warehouse receipts are issued without the required licence;²⁹⁷
- mishandling or unauthorized selling of stored goods;²⁹⁸
- misappropriating stored goods, leading to a failure to deliver;²⁹⁹
- releasing goods without obtaining the corresponding negotiable warehouse receipt, knowing that the receipt is outstanding and not cancelled;³⁰⁰
- receiving a quantity larger than that allowed by a warehouse manager licence.³⁰¹

To protect the integrity and authenticity of warehouse receipts and the interests of the negotiable receipts market in general, legislation can further define offences related to warehouse receipts committed by warehouse operators:

- issuing a warehouse receipt without being authorized by the licensing authority;³⁰²
- intentionally issuing a false warehouse receipt;³⁰³
- issuing a warehouse receipt for goods that are not physically present in the licenced warehouse³⁰⁴ or that are already subject to another issued warehouse receipt;³⁰⁵
- issuing a duplicate receipt not marked as such;³⁰⁶
- issuing warehouse receipts for goods that have not yet been inspected for quality and condition;³⁰⁷
- issuing a receipt for the warehouse operator's goods that does not state he or she owns them (in countries where the legislation allows the warehouse operator to issue receipts for his or her own goods).

Legislation often determines that warehouse operators are liable for the negligence and misconduct of their employees,³⁰⁸ as they are responsible for supervising their employees.

Further, the legislation can define offences committed by the depositor; for example, for depositing goods subject to a lien or mortgage or for which he has no title and for receiving for them a negotiable receipt and negotiating it for value with the intent to deceive without disclosing the mortgage or lack of title.³⁰⁹

Penalties. After defining the offences under the warehouse receipt legislation, the law determines the associated penalties. For criminal offences, the law may determine one or all of the following categories of punishment: imprisonment; monetary fine; suspension and revocation of the warehouse licence; or closure of the warehouse. The same penalties with the exception of imprisonment can be foreseen

²⁹⁷ See e.g., Art. L522–38, C. comm. France; Sec. 11, Bonded Warehouse Act, 1932. The Philippines.

²⁹⁸ See e.g., Art. 35, Ley 9643. Argentina.

²⁹⁹ See e.g., Art. 35, Decree 1102, 1903. Brazil.

³⁰⁰ See e.g., Sec. 62, Warehouse Receipt System Act, 2006. Uganda.

³⁰¹ See e.g., Sec. 11 and 12, Bonded Warehouse Act, 1932. The Philippines.

³⁰² See e.g., Art. 35, Decree 1102, 1903. Brazil; Sec. 64, Warehouse Receipt System Act, 2006. Uganda.

³⁰³ See e.g., Art. 36, Ley 9643. Argentina.

³⁰⁴ See e.g., 7 C.F.R. 735.300(b)(2). US.

³⁰⁵ See e.g., Art. 35, Decree 1102, 1903. Brazil; 7 C.F.R. 735.300(b)(5). US.

³⁰⁶ See e.g., Sec. 50–55, Warehouse Receipts Act, 1912. The Philippines.

³⁰⁷ See e.g., 7 C.F.R. 735.300(b)(3). US.

³⁰⁸ See e.g., Art. 6, Law 9973, 2000. Brazil.

³⁰⁹ See e.g., Sec. 76, Warehouse Receipts Act, 2005. Tanzania; Sec. 63, Warehouse Receipt System Act, 2006. Uganda.

for administrative offences. In most countries, penalties must be set out in a parliamentary-level law due to the level of intrusion of personal liberties.

To effectively deter participants from violating provisions, penalties must be set sufficiently high so that they provide disincentives while still remaining in reasonable proportion to the gravity of the infringement. When countries determine the amount of monetary fines, in view of inflation and other changing factors, it is advisable not to fix a monetary sum but to relate the fine's amount to another more abstract factor. For example, the penalties may be scaled according to the severity of the committed offence. Otherwise, the law would need constant amendments to maintain the appropriate fines. However, this usually depends on the country's general legislative practice concerning penalties and in particular its criminal code.

Besides imprisonment or fines, in case of a violation of the warehouse receipt legislation by a warehouse, the participants in the warehouse system should be protected from potential future violations. To protect market participants, legislation can foresee the possibility to suspend or revoke a warehouse licence and temporarily or permanently prohibit the warehouse operator from conducting a warehouse business again. Furthermore, the legislation can allow to close or liquidate a warehouse.

For example in Kazakhstan, a warehouse licence will be suspended for six months, (or until the violations are corrected), if the warehouse operator fails to adhere to requirements related to grain warehouse receipts; shows systematic problems with quality and quantity determinations; and other violations. A licence may be revoked if the warehouse violated initial licensing requirements, provided false information on the licence application or violated other provisions under the Law on Grain. A more severe measure can be decided, namely the warehouse can be put under external temporary management, if there are egregious failures, such as the systematic failure to perform contractual obligations for storing grain or

the issuing of receipts in excess of the actual amount of grain taken in. As the final stage after egregious violations, the grain warehouse may be liquidated.³¹⁰

The legislation can also give the warehouse operator the possibility to correct the violation before revocation of his or her licence. This is the case in Ukraine, where if an inspection reveals a non-compliance with any of the warehouse requirements, the warehouse first has a 30-day suspension period to correct any non-compliance, after which the oversight authority will revoke the licence.³¹¹ Other countries may empower the oversight authority in case of violation of warehouse legislation provisions to temporarily or permanently revoke the warehouse's authorization.³¹²

Depending on a given country's legal tradition, the warehouse receipt legislation or general legislation can set out the procedures to be followed – such as providing notice to the concerned person and the right to be heard – if a person has been found to have committed an offence under the law. Resulting from the right to a remedy, the concerned warehouse operator must usually be given the possibility to appeal a negative administrative decision to suspend or revoke a warehouse licence. For example in Ukraine, regulations provide for an appeal procedure to decide if certification will be revoked.³¹³ Depending on the countries' general administrative legislation, the law can assign the authority that issued the appealed decision or a higher authority to decide on the appeal, before an appeal to the competent court.

In case of suspension or revocation of a warehouse licence, the oversight authority could be required to publish a notice that names the licence holder to inform the public.³¹⁴

³¹⁰ See Arts. 26-33 and 35(2), Law on Grain. Kazakhstan.

³¹¹ Art. 29, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine.

³¹² E.g. Art. L522-39, C. comm. France; Sec. 34, Warehouse Receipt System Act, 2006. Uganda.

³¹³ Art. 38, Decree on approval of the certificate of compliance for services to store grain, 2009. Ukraine.

³¹⁴ See e.g., Sec. 17(7), Warehouse Receipts Regulations, 2006. Tanzania.

Conclusions

Countries with diverse conditions have facilitated access to agricultural credit through the introduction of legislation for a warehouse receipt system. Effective enabling legislation is considered essential to ensure the wide use of warehouse receipts. This is evidenced by the legislative efforts being made across all regions to set up and/or reform legislation on warehouse receipt systems. This study has highlighted ten core elements or key areas to pay attention to when reviewing, reforming or drafting warehouse receipt legislation. While the approach to regulating each of these elements varies among countries, the underlying objective is always the same: to protect the rights of all parties in the warehouse receipt system, facilitate the system's widespread use and realize the potential associated benefits, including enhanced access to credit.

But, beyond the common objective of facilitating access to credit, the other objectives of a review, reform or introduction of a warehouse receipt system vary widely. Often warehouse receipt legislation was introduced against the background of market liberalization trends in order to stimulate the role and investments of the private sector in agriculture. These objectives ranged from facilitating farmers' access to adequate postharvest handling and storage facilities in sub-Saharan countries to fostering the use of grain warehouse receipts to attract private-sector investments in the grain sector in Kazakhstan.

Depending on the legal tradition of a country, the form of warehouse receipts legislation and its degree of detail differ. For example, legislation can take the form of a very detailed specific law governing the warehouse receipt system, or it can take the form of basic general provisions contained in the commercial code. Yet this study's country review confirmed that there are core elements of warehouse receipt legislation commonly recognized by legislators. Though the elements are common, a variety of regulatory approaches exists to address each of these core elements. The different approaches are shaped by the contextual factors and policy objectives of each country.

Some core elements are similarly regulated in most of the reviewed countries. The traditional approach to administering the system is to designate a primary responsible public institution, and any country with warehouse receipt system legislation provides for a licensing and oversight system. Experience has shown that performance guarantees directly influence the confidence in and use of warehouse receipts by creditors and other participants. Accordingly, legislators in many countries have paid attention to the provision of performance guarantees, and the common regulatory approach is to provide for mandatory insurance and bonding requirements. And while the legal format of warehouse receipts differs according to countries' legal traditions, the required minimum details of receipts are largely similar.

Other regulatory approaches are shared only by a smaller number of countries. A rather recent trend in some countries is the creation of a guarantee fund based on voluntary or mandatory contributions of warehouses and used as an additional warehouse performance guarantee. Another relatively new trend worldwide is the introduction of electronic warehouse receipts. Finally, in some countries where the general legal framework allows for it, a good regulatory practice proved to be the provision of out-of-court enforcement, whereby a lender can quickly recover on a defaulted loan based on the warehouse receipt.

The overall conclusion can be drawn that, while warehouse receipt systems and underlying legislation have existed for centuries, there are new trends for developing the system and adapting it to changing circumstances for a given country. These could be introducing electronic receipts or creating a performance guarantee fund. Whereas changing circumstances can require the legislator to adapt the existing system in some countries, other countries do not have a warehouse receipt system based on legislation in place.

Finally, this study has revealed several related areas and questions that require further research. Specific elements of legislation that

deserve focused research in view of their recent introduction worldwide are electronic warehouse receipts and options for their legal design, the modalities and conditions for linking warehouse receipt systems with exchanges and the creation and operation of guarantee funds as additional performance guarantees. Another question that deserves further examination is how can warehouse receipt legislation facilitate and strengthen the role of smallholder farmers as participants in the system, for example through farmer cooperatives.

Further research that could be used to augment this study would be into how legislation can facilitate farmers' access to credit before harvest through complementary agricultural preharvest financing instruments. One innovative financing instrument, often referred to as crop receipts, allows farmers to access credit by pledging their future harvest. These instruments can complement warehouse receipt finance and would need to be harmonized. This future research could examine how both warehouse receipt finance and preharvest financing instruments could be best regulated to optimally complement one another.

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PART III – Country case studies

The main objective of this third part is to illustrate the different approaches to designing legislation governing a warehouse receipt financing system. It is not a comprehensive assessment of the legislation in place in each country. Rather, different options for regulating warehouse receipt systems are presented and analysed with a view to how they address the key elements of a warehouse receipt system within a specific country context.

Each country is introduced with a brief overview of the agricultural sector and legal framework to set the country's context. Then following the key elements of the legislation, the legal framework governing warehouse receipt financing is described: the scope of application and possible goods or commodities that can be covered by warehouse receipts; the institutional framework; licensing and oversight of warehouses; performance guarantees; contractual rights and obligations of the parties; warehouse receipts including their legal status, content, form and registration; negotiation and transfer of receipts; settlement and release of stored goods; execution and priority of obligation; and offences and penalties.

Each country section ends with a brief conclusion that examines how the legal framework functions in country-specific conditions. The objective is to draw conclusions from the legal design based on its functioning on the ground, including identification of its strengths and weaknesses. However, this study is not intended to evaluate the real market volumes and the actual use of the warehouse receipt systems in all reviewed countries.

Argentina

Introduction to the agricultural sector and legal framework

Argentina's agricultural sector output has grown dramatically over the last several decades.³¹⁵ Currently, Argentina is a major global agricultural producer and exporter; it is among the top four producers of corn, wheat, soybeans and sunflower seeds.³¹⁶

Since the period of economic instability in the 1990s, the agricultural sector has benefited from currency stability and more open market policies. Government intervention and control in agriculture, in the form of commodity boards and subsidies, have declined significantly. The rapid growth in production over the last two decades is due in large part to improvements in agricultural efficiency; thus, agricultural production for Argentina's four major crops increased by 147.8 percent over the period 1992–2008, while the planted area for these crops only increased by 93.1 percent.³¹⁷

Argentina's agricultural sector maintains relative importance because it constitutes more than half of the country's export value, and it directly employs between 18 and 22 percent of the work force.³¹⁸ Despite very strong growth in the last few decades, the agricultural sector has faced several broad challenges that make credit largely inaccessible for smallholder agricultural producers. These challenges include large public- and agricultural-sector debt, suboptimal domestic credit institutions and high interest rates.³¹⁹

To understand the norms relevant to agricultural finance in Argentina, it is necessary to first touch on the broader legal system and the division

³¹⁵ See Bisang, 2008.

³¹⁶ See Chaddad et al., 2009, p. 1.

³¹⁷ Ibid., pp. 1–3.

³¹⁸ See Bisang, 2008.

³¹⁹ See Schnepf et al., 2001, pp. vii, 61.

of power established by the 1994 constitution. Argentina's legal system is based on the civil law tradition. The 1994 Constitution of the Argentine Nation adopts a federal, republican, representative form of government.³²⁰ As a federal system, each of the 23 provinces has its own constitution ensuring the administration of justice, municipal regime and elementary education.³²¹ The national legislature is given the power to enact the national civil, commercial, criminal, mining, labour and social security codes.³²² It also has the power to make laws necessary for human development and economic advancement.³²³ The provinces reserve all powers not explicitly given to the federal government by the constitution, and they may not concurrently exercise power delegated explicitly to the national government. Thus, for example, the provincial governments do not enact civil codes, but they do enact civil procedure codes because this power is not expressly delegated to the federal government.³²⁴

Warehouse Receipt Legislation

Argentina instituted a system for warehouse receipts in 1878 by the enactment of Law 928.³²⁵ Initially the system was limited to customs warehouses and thus, to receipts for imported goods; it was also hampered by costly and cumbersome formal judicial procedures for execution in case of default.³²⁶ In response to these issues, Argentina enacted Law 9643 of 30 September 1914 (hereinafter "the Warrant Law") and created the present system for warehouse regulation and warehouse receipts.³²⁷ This system has remained largely unchanged, although recently there have been calls for reform to make the system more accessible to smallholders.³²⁸ The Warrant Law is divided into two parts: the first details requirements for authorization of agricultural warehouses and the second, operational obligations for

warehouses that issue certificates of deposit and warrants.³²⁹ The Warrant Law was supplemented by subsidiary regulations in the form of a decree that was also promulgated in 1914 and has since been amended.³³⁰

Scope. The Warrant Law allows authorized warehouses to issue certificates of deposit and warrants to depositors for use in credit transactions secured on agricultural products, livestock, timber or mined goods.³³¹ The certificate of deposit represents the title to the deposited goods, while the warrant represents a lien on those goods.³³² According to Article 1 of the law, credit operations over fruits or agricultural products, livestock, forestry, mining or domestic manufactures deposited in a warehouse are made through "certificates of deposit" and "warrants" issued under this law and its executive regulations.³³³

Institutional structure. The Warrant Law does not designate a single institution or regulatory body to oversee its agricultural warehouses and its system for certificates of deposit and warrants, but rather the oversight institution is defined broadly as the Executive Branch (*Poder Ejecutivo*).³³⁴ Thus, the institution in charge of authorizing warehouses and the issuance of warrants and certificates of deposit has changed over time and is set by the Decree Law.

Oversight and implementation responsibilities rest with the Ministry of Agriculture, Livestock and Fisheries (hereinafter "the Ministry").³³⁵ The Ministry is broadly responsible for overseeing and regulating the agricultural sector.³³⁶ The Warrant Law grants the Ministry the power and mandate to review materials submitted by warehouses

³²⁰ Art. 1, Constitution of Argentina.

³²¹ Art. 5, Constitution of Argentina.

³²² Art. 75(12), Constitution of Argentina.

³²³ See Arts. 75(17), (19) and (32), Constitution of Argentina.

³²⁴ Arts. 121 and 126, Constitution of Argentina.

³²⁵ See Di Sciullo, 2013a.

³²⁶ Art. 1, Ley 928, 1878.

³²⁷ Ley 9643, 1914, BORA 6257 (Nov. 20, 1914).

³²⁸ See Di Sciullo, 2013a.

³²⁹ See Arts. 2–5, Ley 9643.

³³⁰ Decreto Nacional S/N, 1914.

³³¹ See Arts. 1 and 2, Ley 9643.

³³² Arts. 8 and 9, Ley 9643.

³³³ "Las operaciones de crédito mobiliario sobre frutos o productos agrícolas, ganaderos, forestales, mineros o de manufacturas nacionales, depositados en almacenes fiscales o de terceros, serán hechas por medio de 'certificados de depósito'; y 'warrants' expedidos de acuerdo con las disposiciones de esta ley y en la forma que reglamente el Poder Ejecutivo."

³³⁴ Art. 2, Ley 9643.

³³⁵ See *ibid.*, Arts. 2, 24 and 30.

³³⁶ See Art. 2, Decreto 1366/2009, 2009; see Ministry of Agriculture, Livestock and Fisheries, www.minagri.gob.ar.

seeking authorization, to decide whether warehouse guarantees are necessary and at what level, to inspect warehouses for compliance with the law and to revoke authorization in case of violations.³³⁷ The Ministry also has the power to determine the form of certificates of deposit and warrants and the classification system for goods that can be deposited in authorized warehouses and covered by certificates of deposit and warrants.³³⁸

Authorization and oversight of warehouses. To apply for authorization, warehouses must submit the following information to satisfy the criteria set by the Ministry: sufficient start-up capital; provisions and insurance against fire and other mechanisms to prevent deterioration of stored goods; operational and administrative rules, including how the warehouse will be monitored and cleaned; the maximum rates to be charged for deposit and other related operations, such as insurance, raising grain, grain cleaning and drying; a statement of the management's obligations regarding the entry and release of stored products and liability in case of loss or damage; the names and addresses of the representatives of the warehouse company; and demonstrated compliance with the level of guarantees required by the Ministry. The Ministry is required to inspect warehouses upon application and thereafter to ensure their compliance.³³⁹

Authorized warehouses and the issuance of certificates of deposit and warrants are subject to the general rules of the National Commercial Code.³⁴⁰ Argentina's Commercial Code outlines several major obligations for warehouse keepers.³⁴¹ They must maintain accurate financial records in hard bound and numbered books in a format approved by the local commercial court or commercial magistrate. They must track, in numerical and chronological order, the details of all goods deposited, including information about the type, quality, quantity, owners, serial numbers (if applicable) and terms of storage.³⁴²

Furthermore, under the Warrant Law, it is forbidden for authorized warehouse companies to purchase or sell agricultural products of the same nature as those referred to in the certificates of deposit and warrants that they issue. The penalty for violation of this rule is revocation of authorization.³⁴³ It is likewise forbidden for warehouses to store in the same or on adjacent premises goods that are likely to negatively affect each other.³⁴⁴

Guarantees. Warehouse receipt system guarantees come in the form of a mandatory bond to be posted by authorized warehouses and mandatory insurance provisions to cover stored goods. Thus, in order for receipt documents (certificates of deposit and warrants) to be issued for stored goods, warehouses must insure the deposited goods against fire to a level set by the Ministry, if the goods are not already insured by the depositor.³⁴⁵ Authorized warehouses must post a bond of a level set by the Ministry, between a minimum of 10 000 pesos and a maximum of 10 percent of the capital of the warehouse.³⁴⁶

Contractual rights and obligations of the parties and risk allocation. Warehouse keepers must store and then promptly deliver the goods they have received upon presentation of the receipt documents.³⁴⁷ Upon deposit, all warehouse keepers must issue receipts declaring the quality, quantity, serial number and markings of deposited goods (if applicable).³⁴⁸ The holder of a certificate of deposit may pay the warrant's amount before the due date of the documents, either directly to the warrant holder or if the warrant holder is unknown, through a court consignment.³⁴⁹

While caring for stored goods, warehouse managers must take care to prevent spoiling, exercising the same duty of care expected for goods that are self-owned, and allow the owner

³³⁷ See Arts. 2 and 24, Ley 9643.

³³⁸ Ibid., Arts. 6 and 30.

³³⁹ Ibid., Arts. 2 and 24.

³⁴⁰ Ibid., Art. 31.

³⁴¹ See Arts. 123-131, Comm. Code (1889, as amended).

³⁴² See *ibid.*, Arts. 53, 123(1) and (2).

³⁴³ Art. 3, Ley 9643.

³⁴⁴ Ibid., Art. 4.

³⁴⁵ Ibid., Arts. 5 and 7(1).

³⁴⁶ Ibid., Art. 2(g); Art. 4(g), Decreto Nacional S/N, 1914.

³⁴⁷ See Art. 124, Comm. Code (1889, as amended).

³⁴⁸ See *ibid.*, Art. 123(3).

³⁴⁹ Art. 15, Ley 9643.

of the goods to inspect them upon request.³⁵⁰ Warehouses must insure deposited goods against fire to a level set by the Ministry, if they are not already insured by the depositor.³⁵¹

Warehouses are liable for all losses or damages to goods from failure to provide the applicable duty of care, theft, embezzlement, omissions and lack of diligence on the part of the warehouse.³⁵² However, warehouses are excused from liability for damage or loss in cases of *force majeure*.³⁵³

Warehouse receipts. The second part of the Warrant Law details requirements for the issuance and mechanics of certificates of deposit and warrants.³⁵⁴ After depositing goods, the depositor may request that the warehouse issue a certificate of deposit and warrant, both of which must include the following:

- the date on which the warrant and certificate are issued;
- the name and address of the depositor;
- the name of the warehouse and signature of the warehouse manager;
- the type of product being stored;
- the quantity, quality, weight, class and number of packages;
- the quality and state of the product;
- the approximate monetary value of the stored goods;
- any other descriptor in accordance with established trade practices for the respective products;
- the amount of insurance covering the stored goods and the insurer's name and address;
- the expected duration of storage and the storage fees.³⁵⁵

The certificate of deposit and warrant must be issued on standardized paper forms promulgated by the Ministry.³⁵⁶ Argentina has created a

minimum threshold for the value of deposited goods for warrants and certificates of deposit to be issued: the deposited goods must be worth more than 500 pesos and be free of prior liens or obligations. Separate documents may be issued for small batches of a deposit, provided that each batch is not worth less than 500 pesos.³⁵⁷

Transferability of warehouse receipts. The certificate of deposit and the warrant can be traded separately by endorsement.³⁵⁸ When a warrant is endorsed credit rights on underlying stored goods are transferred. When a certificate of deposit is endorsed title (ownership) of the underlying stored goods, along with associated obligations in cases where the warrant has been separately negotiated, are transferred. All signatories to a "certificate of deposit" or "warrant" are jointly liable.³⁵⁹ All purchasers of certificates of deposit and holders of warrants are entitled to inspect and take samples of the underlying deposited goods.³⁶⁰

The endorsement must contain the date of endorsement; the name, address and signature of endorser and endorsee; the amount lent; the maturity date; and the place agreed for payment. When traded separately, the following details of the negotiation of the warrant must be entered on the back of the concerned certificate of deposit: the credit amount, the name and address of the lender, the expiration date and the place of payment. The same data must be entered in the issuing warehouse's registry book for the first negotiation of the warrant.³⁶¹ Thus, warehouses are responsible for keeping daily records of the documents they issue.³⁶² The first transfer of the agricultural warrant is registered in the warehouse's books.³⁶³ However, there is currently no provision for a central registry for certificates of deposit and warrants.

Settlement and release of stored goods.

Warehouse managers are responsible to the

³⁵⁰ See Art. 123(4) and (5), Comm. Code (1889, as amended).

³⁵¹ Art. 5, Ley 9643.

³⁵² See Arts. 126 and 127, Comm. Code (1889, as amended).

³⁵³ Art. 126, Comm. Code (1889, as amended).

³⁵⁴ See Arts. 6–32, Ley 9643.

³⁵⁵ Art. 6, Ley 9643.

³⁵⁶ Ibid.

³⁵⁷ Ibid., Arts. 7 and 13.

³⁵⁸ Ibid., Arts. 8 and 9.

³⁵⁹ Ibid., Art. 9 et seq.

³⁶⁰ Ibid., Art. 12.

³⁶¹ Ibid., Art. 10 et seq.

³⁶² Ibid., Art. 6.

³⁶³ See Gerber, 1969, p. 694.

owners of stored goods for their prompt and accurate delivery upon presentation of the receipt documents. If goods are not returned within 24 hours of the end date specified on the receipt, the warehouse keeper could be imprisoned.³⁶⁴ The deposited goods are only released upon presentation of both the certificate of deposit and the warrant.³⁶⁵ The holder of a certificate of deposit may pay the amount of the warrant before the due date of the documents, either directly to the warrant holder or if the warrant holder is unknown, through a court consignment.³⁶⁶ Warehouses are entitled to withhold goods until they are paid, and they maintain a privileged warehouse lien over the goods in the amount of the fees due for storage.³⁶⁷

Execution and priority of obligation. In Argentina there is an out-of-court procedure for the warrant holder to recover in case of debtor default. If a debtor defaults, within ten days from the date of maturity of the warrant (usually six months after issuance), the creditor that holds the warrant petitions the warehouse for a public auction of the underlying stored goods.³⁶⁸ The debtor must be notified by certified mail within two days of this petition. Prior to the auction, notice must be published in two local newspapers for at least ten days, stating the products for sale, the date of the initial warrant negotiation and the original owner's name. The auction cannot be suspended for any reason other than a written court order; bankruptcy, incapacity or death of the debtor will not prevent recovery by the creditor through auction of stored goods.³⁶⁹ After the auction, taxes and unpaid storage fees are paid first.³⁷⁰ If the proceeds from the auction are not sufficient to satisfy the debt owed, the creditor holds the right as a general creditor against the depositor and subsequent title holders.³⁷¹ The creditor that holds the warrant for stored goods has a privileged position over

any other creditor of the debtor (after sale expenses are paid).³⁷²

Offences and penalties. The Warrant Law sets out penalties for violations of the law's obligations on warehouses. Authorized warehouses that purchase or sell agricultural products the same as those referred to in the certificates of deposit and warrants that they issue are subject to penalty in the form of revocation of authorization.³⁷³ Warehouse managers who mishandle or sell off deposited goods are liable for monetary fines and prison terms commensurate with the scale of damages. The monetary fines and imprisonment terms have been updated over time; currently, warehouse managers that cause damage or loss to stored goods covered by a warrant are subject to arrest or imprisonment, depending on the size of the damages. The intentional issuance of false warrants is punishable under the anti-counterfeiting laws.³⁷⁴

Conclusion

The legal framework that applies to warehouses and warehouse receipts in Argentina in some ways typifies the civil law approach found in many countries prior to the wave of reforms over the past two decades. It is useful to study, therefore, in order to understand the legislative starting point of many developing and emerging economies and the challenges presented in countries where agricultural-sector growth has outpaced legislative developments.

It is worth noting that Argentina's Warrant Law includes several features commonly viewed as good practices today, including out-of-court enforcement procedures and performance guarantees. Under the current enforcement procedure, recovery takes a minimum of approximately two weeks after default. If a debtor defaults, then within ten days after the date of maturity of the warrant (usually six months after issuance), the creditor that holds the warrant can petition the warehouse for a public auction of the underlying stored goods.³⁷⁵

³⁶⁴ See Art. 124, Comm. Code (1889, as amended).

³⁶⁵ Art. 13, Ley 9643.

³⁶⁶ Ibid., Art. 15.

³⁶⁷ See Arts. 129 and 130, Comm. Code (1889, as amended).

³⁶⁸ See Arts. 16, 17 and 26, Ley 9643.

³⁶⁹ Ibid., Art. 17 et seq.

³⁷⁰ Ibid., Art. 25.

³⁷¹ See Gerber, 1969, p. 694.

³⁷² Art. 22, Ley 9643.

³⁷³ Ibid., Art. 3.

³⁷⁴ See *ibid.*, Arts. 34-37.

³⁷⁵ See *ibid.*, Arts. 16, 17 and 26.

The debtor must be notified by certified mail within two days of this petition. Prior to the auction, notice must be published in two local newspapers for at least ten days, stating the products for sale, the date of the initial warrant negotiation and the original owner's name.³⁷⁶ In addition to quick enforcement procedures, the requirement that warehouses must post a bond and insure stored goods helps to minimize risk to creditors.

Even in the absence of legislative developments, data from the 1990s through 2000s indicate that the use of warrants for agricultural finance in Argentina grew significantly during this period: between 1991 and 2009, the annual sum value of issued warrants increased from 3.4 million pesos to 6 155 million pesos.³⁷⁷ Depending on the season, warrants are commonly issued for a variety of products, including soy beans, wheat, milk products, tobacco and sugar.³⁷⁸

Even though Argentina's system for warehouse receipts (certificates of deposit and warrants) remains largely unchanged after nearly a hundred years, it still incorporates many components included in newly designed legislation for warehouse receipts, such as warehouse licensing, out-of-court enforcement procedures and performance guarantees in the form of bonding and insurance requirements. Yet, there have been calls for reforms to improve the warrant as an agricultural credit facilitator.³⁷⁹ Recently proposed reforms include shortening the public notice requirements for default auctions, creating a more comprehensive penalty regime and further specifying minimum insurance requirements.³⁸⁰ The creation of a central registry could also improve the system. Each of these reforms could potentially increase transparency and creditor trust in Argentina's warehouse receipt system and further open the provision of agricultural credit.

Box 8: At a glance – Argentina's warehouse receipts legislation

Key legislation: The Warrant Law (Law 9643 of 30 September 1914).

Scope: Fruits or agricultural products, livestock, forestry, mining or domestic manufactures deposited in a warehouse.

Institutional structure: The Ministry of Agriculture, Livestock and Fisheries has been the designated oversight and implementation authority since 1995.

Authorization and oversight of warehouses: Warehouses must comply with authorization requirements and are forbidden from trading in the type of products stored.

Guarantees: There is a mandatory bond of up to 10 percent of warehouse capital to be posted by authorized warehouses and mandatory insurance provisions to cover stored goods.

Contractual rights and obligations of the parties and risk allocation: The Law outlines the duty of care for warehouse keepers, but notably, warehouses are excused from liability for damage or loss in cases of *force majeure*.

Warehouse receipts: Argentina uses two-part warehouse receipts: the certificate of deposit represents a title to the deposited goods and the warrant represents a lien on those goods.

Transferability of warehouse receipts: The certificate of deposit and the warrant can be traded separately by endorsements. There is currently no provision for a central registry for certificates of deposit and warrants.

Settlement and release of stored goods: The deposited goods will only be released upon presentation of both the certificate of deposit and the warrant. The holder of a certificate of deposit may pay the amount of the warrant before the due date of the documents.

Execution and priority of obligations: Argentina allows for an out-of-court auction procedure for the warrant holder to recover in case of debtor default.

Offenses and penalties: The Law provides for penalties – including revocation of authorization, fines and imprisonment – for violations of warehouse rules and rules related to warehouse receipts.

³⁷⁶ Ibid., Art. 17.

³⁷⁷ See Ministry of Agriculture, Livestock and Fisheries, 2010b.

³⁷⁸ See Ministry of Agriculture, Livestock and Fisheries, 2010b.

³⁷⁹ Di Sciullo, 2013b.

³⁸⁰ Di Sciullo, 2013b.

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Brazil

Introduction to the agricultural sector and legal framework

Brazil's agricultural sector has experienced rapid growth over the past few decades.³⁸¹ Between 2001 and 2011, the value of Brazil's annual agricultural exports increased by roughly 400 percent; for comparison, agricultural exports from the United States of America grew by 175 percent over that period.³⁸² Although past growth was propelled in part by conditions unlikely to continue (such as low currency exchange rates),³⁸³ Brazil's agricultural sector is expected to continue to grow at a dominant pace over the next decade.³⁸⁴

It is a major player in several agricultural production categories.³⁸⁵ For example, Brazil is currently the world's leading sugar producer and a major exporter of sugar cane for ethanol production.³⁸⁶ Over the next decade, Brazil is expected to surpass the United States as the world's leading exporter of oilseeds.³⁸⁷ Additionally, because of abundant land, capital, technology and improved policies and disease controls, Brazil is expected to increase its share as one of a handful of major meat and poultry exporting countries.³⁸⁸

Growth in the agricultural sector has occurred against the backdrop of radical changes in economic and agricultural policies.³⁸⁹ In 1965, Brazil established the National System for Rural Credit (SNCR).³⁹⁰ It allowed the government to widely intervene to guarantee the availability of credit at preferential interest rates for working capital and marketing in agriculture.³⁹¹ Then over the last several decades, the Brazilian economy experienced increased market liberalization

and deregulation and decreased government involvement.³⁹² Starting in the 1980s and 1990s, the Brazilian government began to withdraw from extensive and active involvement in the agricultural sector, leaving a large gap in agricultural support and rural credit.³⁹³ As a result, official rural credit is no longer as important as it was prior to the 1980s, and now roughly 70 percent of the working capital necessary to fund agriculture comes from private sources (up from roughly 20 percent during the 1980s).³⁹⁴ Currently, it is estimated that Brazil provides comparatively little governmental support to its farmers.³⁹⁵ Decreasing government intervention has left space for the creation of a new wave of financial instruments for the private financing of agribusiness.³⁹⁶

In addition to government policy changes, the Brazilian constitutional system and legislative framework for agricultural finance have undergone rapid changes in the last few decades. The most recent Constitution of the Federal Republic of Brazil was ratified on October 5, 1988, and it has since been amended 68 times (as of January 2012). The constitution reserves the power to legislate on civil, commercial, agrarian and credit policy matters for the federal government.³⁹⁷ And several pieces of federal legislation enacted since 1988 have revolutionized the system of private agricultural finance in line with the policy of decreasing the government's presence in private agriculture.

Brazil has created several new agricultural finance instruments over the past two decades: the agricultural certificate of deposit (CDA) and the agricultural warrant (VA).³⁹⁸ Brazil's legal system falls within the civil law tradition and accordingly, these agricultural finance instruments are disciplined by civil and commercial codes. In general, these instruments are governed

³⁸¹ See OECD, 2005, p. 12 (graph of Brazil's agricultural output trends by sector).

³⁸² USDA, 2012, p. 1.

³⁸³ See OECD, 1999, p. 25; see also, OECD, 2005, pp. 12, 13 and USDA, 2012, p. 2.

³⁸⁴ OECD & FAO, 2010, p. 20.

³⁸⁵ See e.g., de Onis, 2008, p. 113.

³⁸⁶ OECD & FAO, 2009, p. 18.

³⁸⁷ *Ibid.*, pp. 17, 18.

³⁸⁸ *Ibid.*, p. 20; see also, OECD & FAO, 2010, p. 33.

³⁸⁹ See e.g., Schnepf et al., 2001, p. 35.

³⁹⁰ Law 4.829, Institutionalizing rural credit, 1965.

³⁹¹ MAPA, 2008, p. 7.

³⁹² *Ibid.*, p. 5; see also, OECD, 2005, p. 11 and Guimarães, 2010.

³⁹³ MAPA, 2008, p. 5.

³⁹⁴ See Ramos & Bueno Martha, 2010, pp. 56, 57; de Sousa & Pimentel, 2005, p. 4.

³⁹⁵ OECD, 2005, p. 9; but see also, USDA, 2011.

³⁹⁶ See Ramos & Bueno Martha, 2010 pp. 44, 45, 56, 57.

³⁹⁷ Art. 22 (I, VII), Constitution of the Federative Republic of Brazil, 1988. See also Comparato, 1990, p. 757.

³⁹⁸ Coelho, 2010, p. 403.

by the law of negotiable instruments, which serves as a backdrop and gap filler.³⁹⁹ However, the negotiable instruments law that governs agricultural finance instruments is fairly complex.⁴⁰⁰

Warehouse receipt legislation

Until recently, Brazil's agricultural sector lacked effective regulation of warehouses. Warehouses of all types were regulated loosely by a general legal framework created by Decree No. 1102 in 1903. In the 1990s, studies of the agricultural warehouse system in Brazil showed problems in many areas: "poor location, overcapacity; unsuitable handling design (bag versus bulk); poor quality of installations; inadequate facilities for segregation of cereals by type, grade, age; inadequate quality control equipment and discharge facilities, and; lack of suitable access roads and transport facilities."⁴⁰¹ In 2000, Brazil responded and enacted legislation that created a legal framework governing warehouses storing agricultural products.⁴⁰² This legislation was followed in 2004 by further legislation, creating the CDA and WA warehouse receipt instruments for agricultural products.⁴⁰³

Scope. Brazilian law provides for the regulation of warehouses and warehouse receipts under Decree No. 1102 of 1903; a separate law, Law 9973 enacted in 2000, applies specifically to warehouses that store agricultural products. Decree No. 1102 of 1903 is still in force and

applies to all natural or legal persons running or wishing to establish a general warehouse storing any goods.⁴⁰⁴ It establishes the requirements to operate a warehouse, rights and obligations of warehouses, the issuance and circulation of warehouse receipts, the conduct of sales of stored goods and the penalties for violations.

The regime for agricultural warehouses and agricultural warehouse receipts applies only to "agricultural products, derivatives, sub-products, and wastes of economic value."⁴⁰⁵ Law 9973 of 2000 and its supporting regulations⁴⁰⁶ on warehouse requirements and Law 11076 of 2004 that created agricultural warehouse receipts provide for a certification system for agricultural warehouses and state the obligations of agricultural warehouse keepers.⁴⁰⁷ In 2001, supporting regulations to Law 9973 provided further detailed requirements related to agricultural storage contracts; responsibilities and duties of warehouse keepers; trade in products similar to those stored; the issue of securities; certification of warehouses; verification of inventories and conditions of storage; the warehouse's right to retain stored products; and penalties.⁴⁰⁸ Law 11076 of 2004 created several agricultural security instruments including the CDA and WA. Accordingly, it covers the establishment, issuance and registration of the CDA and WA; removal of the underlying goods; and mandatory insurance requirements.⁴⁰⁹

Institutional structure. Under Decree No. 1102, the local Board of Trade (*Junta Comercial*) is responsible for authorizing general warehouses, and it is not permitted to run a general warehouse without authorization.⁴¹⁰ Each of Brazil's 26 states has its own separate Board of Trade that is broadly responsible for registration of business activities within its state.⁴¹¹ The local Boards of Trade are tasked with supervising compliance with the warehousing and receipt

³⁹⁹ See e.g., Art. 10, Law 8.929, 1994; Art. 2, Law 11076, 2004.

⁴⁰⁰ For example, Physical and Financial CPRs were introduced by legislation promulgated before the Civil Code came into effect, so these instruments are governed by the Geneva Uniform Law (GUL) on Bills of Exchange and Promissory Notes (see Coelho, 2010, p. 404). The GUL is the result of an international treaty entered into force in 1934 that Brazil acceded to in 1942. While also disciplined by the regime of negotiable instruments law, CDAs and WAs were introduced after the Civil Code came into effect and are therefore disciplined by the supplementary general law of the code, not the GUL. This distinction matters because the code and the GUL diverge in many respects. Nevertheless, the code and GUL are in a way subsidiary to specific legislation. For example, the law introducing CDAs and WAs makes three rules that differ from the general regimes established by the GUL and Code: (1) blank endorsements are not allowed, (2) the endorser is only liable for the existence of the obligation, not to deliver the products, and (3) the right against endorsers is preserved even without protesting. See generally Coelho, 2010, pp. 400, 401; see also, Buranello, 2010, pp. 645, 646.

⁴⁰¹ DFID, 1998, p. 12.

⁴⁰² Law 9973, 2000.

⁴⁰³ Law 11076, 2004.

⁴⁰⁴ See Art. 1, Decree 1102, 1903.

⁴⁰⁵ See Art. 1, Law 9973, 2000; Art. 1, Law 11076, 2004.

⁴⁰⁶ Decree 3855, 2001.

⁴⁰⁷ Law 9973, 2000.

⁴⁰⁸ See generally, Decree 3855, 2001.

⁴⁰⁹ See generally, Arts. 1–22, Law 11076, 2004.

⁴¹⁰ Art. 1, Decree 1102, 1903.

⁴¹¹ Mello, 2012.

requirements under Decree 1102, as well as inspecting quarterly records submitted by warehouses.⁴¹² The relevant Board of Trade has the power to inspect warehouses whenever it sees fit.⁴¹³

For agricultural warehouses, the primary oversight institution is the national Ministry of Agriculture, Livestock and Food Supply (Ministério da Agricultura, Pecuária e Abastecimento [MAPA]). MAPA is tasked with creating a certification system for agricultural warehouses by establishing their technical and operational conditions and determining the required documentation for qualification to operate an agricultural warehouse.⁴¹⁴ Accordingly, MAPA has the power to regulate agricultural warehouses, collect information, inspect for compliance and impose penalties for non-compliance.⁴¹⁵ Within MAPA, the National Supply Company (CONAB) registers agricultural warehouses as required under Law 8171 of 1991.⁴¹⁶ The separate National Institute of Metrology, Quality and Technology (INMETRO) certifies private-sector service providers that can serve as MAPA's compliance inspectors.⁴¹⁷ Lastly, the Central Bank of Brazil maintains the mandatory central registration system for CDAs and WAs.⁴¹⁸

Regulation of warehouses. To operate a general warehouse under Decree No. 1102, an applicant must submit to the local Board of Trade the required information: the name of the operating person or company; the name, location and capacity of the warehouse; the nature of goods to be stored; the services proposed to be offered; the warehouse operation rules and rules for public sales if applicable; a storage fee schedule; and, in the case of a company as operator, the certificate of incorporation or bylaws of the company. The operator of the warehouse must submit a signed statement indicating its liability for the goods entrusted to it, and if

not already registered as a business, must do so before authorization. Those who have been convicted of wrongful or fraudulent bankruptcy, embezzlement, breach of trust, deceit or theft may not operate warehouses. If the Board of Trade authorizes the warehouse, it will publish notice of authorization in the largest circulation local newspaper and will add the warehouse to a register of authorized warehouses. Any changes in operation or tariffs must be approved and published by the Board of Trade.⁴¹⁹

Warehouses seeking to store agricultural products must apply for certification from MAPA, as provided under Law 9973 of 2000 and its supporting regulations.⁴²⁰ It is prohibited to operate an agricultural warehouse open to the public without certification under this National Certification System of Storage Units.⁴²¹ The requirements for warehouse certification were developed over several years by a working group comprised of representatives from private industry and several government ministries. Published in 2007, the requirements for certification of agricultural warehouses took effect at the end of 2009.⁴²² Agricultural warehouses are required to apply for certification through an authorized private inspection contractor under MAPA, after first applying for registration through CONAB.⁴²³ The authorized inspections contractor reviews the required documentation, conducts an initial inspection, issues or denies a certification and, thereafter, regularly inspects for compliance.⁴²⁴

In order to receive a certification, agricultural warehouses are evaluated for their compliance with requirements falling into 15 categories: registration in the system maintained by CONAB; location of the warehouse; local infrastructure; premises security; customer service practices; office facilities; weighing system; sampling system; determination of product quality; cleaning system; drying system; internal transport system; storage

⁴¹² Art. 13, Decree 1102, 1903.

⁴¹³ Ibid.

⁴¹⁴ Art. 2, Law 9973, 2000.

⁴¹⁵ See Arts. 10–14, Law 9973, 2000.

⁴¹⁶ Annex I Art. 1, Instruction 33, 2007; Art. 42, Law 8171, 1991.

⁴¹⁷ See Annex II Arts. 4.9 and 8, Instruction 33, 2007.

⁴¹⁸ See Art. 15, Law 11076, 2004.

⁴¹⁹ Art. 1, Decree 1102, 1903.

⁴²⁰ Art. 2, Law 9973, 2000.

⁴²¹ Art. 16, Decree 3855, 2001.

⁴²² MAPA, 2009.

⁴²³ Annex II Arts. 5.2.1 and 5.1.2, Instruction 33, 2007.

⁴²⁴ Ibid., Art. 5.2.

system; ventilation system; record-keeping practices; and other requirements such as staff training.⁴²⁵ Certifications last for five years, assuming continued compliance with certification requirements as confirmed by the inspections contractor.⁴²⁶

Note that, even for agricultural warehouses regulated by MAPA, under Law 9973 of 2000 there is a requirement to register with the local Board of Trade.⁴²⁷

Further, Decree No. 1102 Article 7 requires operators of general warehouses to keep detailed daily record books for all deposits, releases and issuances of receipts. The specific legal framework for storage of agricultural products adds a few details: it obliges warehouses to keep records and submit information as required to MAPA or its designated compliance monitoring entities.⁴²⁸ Notably, Law 9973 allows trading in the type of products stored.⁴²⁹

Guarantees. Under the general framework, the only guarantees are mandatory insurance for those goods covered by certificates of deposit and warrants. Thus, all stored goods covered by securities must be insured against fire by the warehouse.⁴³⁰ Several additional risks are insured against according to the framework for agricultural products. Warehouse operators are required to insure stored agricultural products against fire, flood and any other weather event that may damage or destroy the stored products.⁴³¹ For goods underlying issued CDAs and WAs, it is necessary to insure against fire, lightning, explosions of any kind, electrical damage, windstorms, floods, theft, hurricanes, cyclones, tornadoes, hail, smoke, storms, falling aircraft, spacecraft or other devices and impact of vehicles that may destroy or damage the underlying product.⁴³² There are no explicit mandatory guarantee provisions, but

the warehouse and depositor may agree on guarantee provisions that must then be recorded on issued security documents.⁴³³

Contractual rights and obligations of the parties and risk allocation. General warehouses are responsible for the conservation and faithful delivery of the goods that they have received for storage.⁴³⁴ When a deposit is made, the warehouse is obligated to give a receipt to the depositor stating the details of what was stored (separate from securities and warehouse receipts).⁴³⁵

Decree No. 1102 places several obligations on operators of general warehouses. Warehouse operators may not discriminate between depositors for any service, nor may they reject deposits unless there is insufficient storage capacity, the warehouse is not authorized to store such goods or the proposed goods would damage other goods already stored. A warehouse operator may not give preferential pricing below the posted tariff schedule for any depositor, or trade in the type of goods that he or she stores for depositors.⁴³⁶ A warehouse may store fungible goods of different depositors together as long as it has procedures that distinguish between types and quality.⁴³⁷ Depositors and any interested parties are permitted to examine stored goods at any time with reasonable notice given to the warehouse operator.⁴³⁸ Furthermore, all stored goods covered by securities must be insured against fire by the warehouse.⁴³⁹

The specific legal framework for storage of agricultural products reiterates many of the same obligations present in the general legal framework but adds a few details. Thus, warehouses are responsible for maintaining and promptly delivering stored agricultural products. Warehouse operators are required to insure stored agricultural products against fire, flood and any other weather event that may damage or

⁴²⁵ See generally, *ibid.*, Annex I.

⁴²⁶ *Ibid.*, Annex II Art. 5.2.4.

⁴²⁷ See Art. 2, Law 9973, 2000.

⁴²⁸ See Art. 10, Law 9973, 2000.

⁴²⁹ Art. 8, Law 9973, 2000; Arts. 11 and 12, Decree 3855, 2001.

⁴³⁰ Art. 16, Decree 1102, 1903.

⁴³¹ Art. 6, Law 9973, 2000; Art. 7, Decree 3855, 2001.

⁴³² See Art. 22, Law 11076, 2004.

⁴³³ See Art. 8, Decree 3855, 2001.

⁴³⁴ Art. 11, Decree 1102, 1903.

⁴³⁵ *Ibid.*, Art. 6.

⁴³⁶ *Ibid.*, Art. 8.

⁴³⁷ *Ibid.*, Art. 12.

⁴³⁸ *Ibid.*, Art. 9.

⁴³⁹ *Ibid.*, Art. 16.

destroy the stored products.⁴⁴⁰ Warehouses are obligated to allow access to depositors.⁴⁴¹ Law 9973 prescribes requirements for the content of a storage contract between an agricultural warehouse and a depositor: a description of the goods stored, the storage period, the price and form of compensation for services rendered, the rights and obligations of the depositor and the warehouse and financial compensation for difference in quality and quantity.⁴⁴²

In case of damage or failure to deliver, warehouses are liable for the value of the stored goods at the time of delivery as if they were in good condition. General warehouses are liable for theft, trespassing, fraud and wilful misconduct of warehouse employees with respect to stored goods.⁴⁴³ Likewise, under the specific legal framework for storage of agricultural products, warehouses are liable for negligence or wilful misconduct of employees or representatives, thefts, robberies, accidents and damages caused by improper handling of stored agricultural products.⁴⁴⁴ However, warehouses are not liable in cases of *force majeure* and faults or flaws deriving from the nature of the goods themselves.⁴⁴⁵ Depositors are liable for issues arising from the nature, quality and condition of products stored in packages that preclude inspection.⁴⁴⁶

Warehouse receipts. Upon request of the depositor, general warehouses must issue two-part securities consisting of a certificate of deposit (*conhecimento de deposito*) and a warrant.⁴⁴⁷ Similar to several other civil law systems, the warrant gives pledge rights over the stored goods, and the certificate of deposit gives rights to dispose of the goods subject to satisfaction of pledge obligations on the warrant. When transferred together, these securities provide full rights to freely dispose of the stored goods.⁴⁴⁸ Each of these instruments is negotiable

and must contain the name and address of the warehouse; the contact details of the depositor or a third-party chosen by the depositor; details of any transfer or different location for claiming the goods; the nature, quantity and quality of the goods stored; details of the insurer and insurance level for the goods; a declaration of any taxes or expenses that must be satisfied on the goods; the date of issue; and the signature of the authorized warehouse representative.⁴⁴⁹ Securities must be taken from special books with serial numbers and must contain an acknowledgement by the depositor on the back of the document.⁴⁵⁰ The goods stored and covered by securities must not be encumbered by any liens that would prevent full and free disposal.⁴⁵¹

After consolidating and improving the regulations of warehouses storing agricultural products, Brazil created new instruments for agricultural warehouse receipts in 2004: the CDA (agricultural certificate of deposit) and the WA (agricultural warrant).⁴⁵² The CDA and WA are issued together by a warehouse after a producer deposits agricultural products and requests them.⁴⁵³ The CDA represents the promise to deliver goods already deposited in the warehouse, and the WA grants a lien on the promised goods.⁴⁵⁴ The CDA and WA are similar to the certificates of deposit and warrants that existed under the general regime established by Decree 1102 in 1903, except in three major respects: (1) only CDAs and WAs can represent stored agricultural and livestock products, (2) CDAs and WAs are tradable in markets, whereas general receipts are not and (3) CDAs and WAs benefit from the regulation and certification system established in 2000, specifically for agribusiness warehouses.⁴⁵⁵

Thus, a producer who deposits harvested agricultural products in an agribusiness warehouse subject to Law 9973 may request

⁴⁴⁰ Art. 6, Law 9973, 2000; Arts. 6 and 7, Decree 3855, 2001.

⁴⁴¹ See Arts. 18 and 19, Decree 3855, 2001.

⁴⁴² Art. 3, Law 9973, 2000.

⁴⁴³ Art. 8, Decree 1102 of 21, 1903.

⁴⁴⁴ Art. 6, Law 9973, 2000; Art. 6, Decree 3855, 2001.

⁴⁴⁵ Art. 11, Decree 1102, 1903.

⁴⁴⁶ Art. 6, Law 9973, 2000; Art. 7, Decree 3855, 2001.

⁴⁴⁷ Art. 15, Decree 1102, 1903.

⁴⁴⁸ *Ibid.*, Art. 18.

⁴⁴⁹ *Ibid.*, Art. 15.

⁴⁵⁰ *Ibid.*

⁴⁵¹ *Ibid.*, Art. 17.

⁴⁵² See Art. 1, Law 11076, 2004.

⁴⁵³ *Ibid.*, Art. 1§3.

⁴⁵⁴ *Ibid.*, Art. 1§1 and §2; see also, MAPA, 2008, p. 19.

⁴⁵⁵ Coelho, 2010, p. 409.

to be issued a CDA and WA.⁴⁵⁶ Before these are issued, the depositor must formally declare that the goods are free of any obligations or liens and grant power to the warehouse to release them to the endorser of the CDA.⁴⁵⁷ The CDA and the WA must be issued in duplicate copies (original to the depositor and the copy for the warehouse) and contain the following information:

- the name on the title;
- a matching control number for CDA and WA;
- a statement that the product is subject to warehouse laws;
- identification, qualification and address of the depositor and warehouse;
- the commercial identification of the warehouse;
- a drawn-to-order clause;
- the address of the storage location;
- product description and specification;
- the gross and net weight of the goods;
- the type of packaging of the goods;
- the number of volumes of the goods, as appropriate;
- the value of storage services, storage and shipment, the frequency of billing statement, and the person responsible for payment;
- identification of insurance product and amount of insurance;
- qualification of the guarantee offered by the warehouse, if applicable;
- the date of receipt of the product and maturity of the deposit;
- the date the security is issued;
- identification, qualification and signature of the legal representative of the warehouse;
- precise identification of the rights these documents confer.⁴⁵⁸

Separate CDAs and WAs can be issued for specified fractions of the deposited product if the depositor wants to enter into multiple smaller transactions.⁴⁵⁹ The term of the agreement will

be one year, unless extended and adjusted for any changes in the condition of the product over time.⁴⁶⁰ Guarantees can be included by mutual agreement and registered in the CDA.⁴⁶¹

Although initially issued in duplicate paper form, the CDA and WA are processed in electronic format after registration. Thus, the depositor must register the issued CDA and WA in the national central registration system within 30 days of issuance.⁴⁶²

Transferability of warehouse receipts. Under the general framework, certificates of deposit and warrants may be transferred either separately or together through endorsements. Transferring the warrant gives pledge rights over the stored goods, and transferring the certificate of deposit gives rights to dispose of the goods subject to satisfaction of the pledge obligations detailed on the warrant. When transferred together, these securities give full rights to freely dispose of the stored goods.⁴⁶³

After registration, the CDA and WA are tradable on markets and over the counter, both separately and together, and transactions are updated electronically by the registration entity.⁴⁶⁴ Negotiations on CDAs and WAs are tax exempt.⁴⁶⁵ “The WA allows its holder to pledge the product as collateral for a bank loan, while the CDA allows its holder to sell the goods.”⁴⁶⁶ Therefore, the depositor has three main options: (1) to sell both the CDA and WA at the same time (selling all rights to the goods); (2) to pledge the goods as collateral for a loan (sell WA only); and (3) sell the WA and then later sell the CDA. This last option is “the equivalent of making a loan guaranteed by the deposited goods (WA) and later selling the CDA for the difference between the value of the CDA and the debt balance of the WA.”⁴⁶⁷ Although the CDA and WA may be traded separately, the goods will only be released once

⁴⁵⁶ Arts. 1§1 and 6, Law 11076, 2004.

⁴⁵⁷ See *ibid.*, Art. 6.

⁴⁵⁸ *Ibid.*, Art. 5.

⁴⁵⁹ *Ibid.*, Art. 10.

⁴⁶⁰ *Ibid.*, Art. 13.

⁴⁶¹ *Ibid.*, Art. 5(XIV).

⁴⁶² See *ibid.*, Arts. 3, 8 and 15.

⁴⁶³ Art. 18, Decree 1102, 1903.

⁴⁶⁴ See Arts. 16, 17, Law 11076, 2004.

⁴⁶⁵ See *ibid.*, Art. 18.

⁴⁶⁶ MAPA, 2008, p. 20.

⁴⁶⁷ *Ibid.*

the CDA and WA are reunited. Once the CDA and WA are issued, the covered stored products cannot be subject to any other attachment, embargo or sequestration that would impair their free disposal.⁴⁶⁸

Settlement and release of stored goods.

Generally, products covered by a certificate of deposit and warrant may only be released after both documents are presented and cancelled.⁴⁶⁹ However, the holder of the certificate of deposit alone may retrieve the stored goods by paying to the warehouse the amount of outstanding debt secured by the warrant along with all due interest, taxes and fees. The warehouse must then provide a mailed notice to the warrant's first endorser on record that a payment has been made and the warrant must be presented to retrieve payment. If payment is not retrieved within eight days, then the warehouse must deposit the amount with the court.⁴⁷⁰

The process for settlement and release of goods under a CDA or WA is nearly identical, as goods will only be released once they are reunited. But only the holder of the CDA may retrieve the stored goods by paying to the warehouse the amount of outstanding debt secured by the warrant along with all interest, taxes and fees due. This is equivalent to real and effective repayment of the debt secured by the warrant.⁴⁷¹

Execution and priority of obligation. The CDA and WA are extra-judicially enforceable.⁴⁷² Under the general legal framework, the holder of a warrant that is securing a loan may foreclose on stored goods by way of an out-of-court procedure and public auction.⁴⁷³ Thus, if the loan secured by a WA has not been repaid at the time of maturity, the underlying goods may be auctioned immediately to satisfy the debt. A notice procedure is not specified by the legislation.⁴⁷⁴ The holder of the warrant enjoys a privileged position for recovery from the proceeds of the

auction, after government taxes, auction fees and the warehouse lien are satisfied.⁴⁷⁵ General warehouses are entitled to impose a warehouse lien for unpaid storage charges that is prioritized over the bankruptcy estate of the depositor.⁴⁷⁶

Offences and penalties. The managers or administrators of general warehouses are liable for arrest within 24 hours after a complaint is filed in court that the warehouse failed to deliver stored goods as requested.⁴⁷⁷ Decree No. 1102 of 1903 provides for monetary fines and revocation of warehouse authorization in cases of non-compliance with legal requirements.⁴⁷⁸ Furthermore, imprisonment of one to four years and heightened monetary penalties are imposed for issuing securities without authorization from the Board of Trade; issuing securities for goods not stored or goods already covered by another issued security; pledging or trading by warehouses on the securities that they issue; and misappropriating stored goods, leading to a failure to deliver.⁴⁷⁹

In cases of violation of Law 9973, the certification of agricultural warehouses can be suspended or cancelled.⁴⁸⁰ MAPA imposes penalties for failure to comply with the following 12 obligations: adjusting and updating the documents evidencing registration or certification for the provision of storage services; providing information to the agricultural warehouses national registration system; meeting deadlines prescribed by authorities; formalizing the deposit agreement; fulfilling responsibilities to the depositor; indemnifying the depositor for damages; offering guarantees if requested by the depositor; obtaining prior authorization from the depositor for the marketing of products under their care, if applicable; keeping proper records; allowing free access to inspectors and depositors; and complying with imposed penalties.⁴⁸¹

⁴⁶⁸ Art. 12, Law 11076, 2004.

⁴⁶⁹ Art. 21, Decree 1102, 1903.

⁴⁷⁰ Ibid., Art. 22.

⁴⁷¹ See Art. 21, Law 11076, 2004.

⁴⁷² Ibid., Art. 1(4).

⁴⁷³ Art. 23, Decree 1102, 1903.

⁴⁷⁴ See Art. 17, Law 11076, 2004.

⁴⁷⁵ Art. 26, Decree 1102, 1903.

⁴⁷⁶ Ibid., Art. 14.

⁴⁷⁷ Ibid., Art. 11.

⁴⁷⁸ See *ibid.*, Arts. 32 and 33.

⁴⁷⁹ Ibid., Art. 35.

⁴⁸⁰ Art. 13, Law 9973, 2000.

⁴⁸¹ See Arts. 21–31, Decree 3855, 2001.

Box 9: At a glance – Brazil's warehouse receipts legislation

Key legislation: Law 9973 of 29 May 2000; Law 11076 of 30 December 2004.

Scope: Agricultural products, derivatives, subproducts and wastes of economic value.

Institutional structure: The Ministry of Agriculture, Livestock and Food Supply (MAPA) is given the power to regulate agricultural warehouses, collect information, inspect for compliance and impose penalties for non-compliance. The Central Bank of Brazil is tasked with maintaining the mandatory central registration system of warehouse receipts.

Authorization and oversight of warehouses: To receive a mandatory certification, agricultural warehouses are evaluated for their compliance with requirements falling into 15 categories. Notably, certified warehouses are not forbidden from trading in the type of products stored.

Guarantees: Warehouse operators are required to insure stored agricultural products.

Contractual rights and obligations of the parties and risk allocation: Law 9973 prescribes requirements for the storage contract. Warehouses are not liable in cases of *force majeure* and faults or flaws deriving from the nature of the goods themselves.

Warehouse receipts: Brazil uses two-part warehouse receipts. The CDA represents the title to the deposited goods, and the WA represents a lien on those goods.

Transferability of warehouse receipts: The CDA and the WA are capable of separate trading by endorsement. There is a central registry for the issuance of and trade in CDAs and WAs.

Settlement and release of stored goods: The deposited goods are only released when both the CDA and WA are presented. The holder of a CDA may pay the amount of the WA before the due date of the documents.

Execution and priority of obligations: Brazil allows for an out-of-court auction procedure for the creditor to recover in case of debtor default.

Offenses and penalties: Brazil provides for civil and criminal penalties – including revocation of authorization, fines and imprisonment – for violations of warehouse rules and rules related to warehouse receipts.

In addition, a warehouse is civilly and criminally liable for inaccuracies and irregularities in the CDAs and WAs it issues.⁴⁸² Warehouses are liable for the negligence and misconduct of employees, and the president, directors and managing partners are jointly liable for the goods stored.⁴⁸³ Violators of the Law 11076 of 2004 introducing the CDA and WA face possible imprisonment of one to four years.

Conclusion

Brazil's agricultural sector is experiencing rapid changes and strong growth, and these changes have occurred against the backdrop of radical changes in economic and agricultural policies.⁴⁸⁴ Although Brazil's broader legal framework for warehouses and warehouse receipts dates back to 1903, recent challenges brought about by growth have forced reforms.⁴⁸⁵ Legislative developments since the year 2000 have sought to address these challenges with a two-pronged focus on more effective regulation of warehouses and more attractive warehouse receipts. Improved agricultural warehouse regulation and the CDA and WA were part of a multifaceted attempt to roll out four main new agricultural finance instruments over the past two decades: the Physical Cedula de Produto Rural (CPR), the Financial CPR, the CDA and the WA.⁴⁸⁶

Although it is too early to meaningfully gauge the effectiveness of warehouse regulation efforts, the legal framework for regulation of agricultural warehouses is comprehensive and promising. The scope includes all "agricultural products, derivatives, sub-products, and wastes of economic value."⁴⁸⁷ The legal framework outlines the obligations and level of care expected of warehouse keepers. Warehouses are required to insure stored goods against a list of enumerated risks and to allow access to inspectors and depositors. The development of certification criteria required several years of work and consultation with a variety of private stakeholders and government ministries. Although several

⁴⁸² Art. 9, Law 11076, 2004.

⁴⁸³ Art. 6, Law 9973, 2000.

⁴⁸⁴ See e.g., Schnepf et al., 2001, p. 35.

⁴⁸⁵ DFID, 1998, p. 12.

⁴⁸⁶ Coelho, 2010, p. 403.

⁴⁸⁷ See Art. 1, Law 9973, 2000; Art. 1, Law 11076, 2004.

government institutions play a role, the process is largely streamlined from the point of view of applicant warehouse operators. The result is a comprehensive inspection system consistent with a modern and developed agricultural sector.

The agricultural warehouse receipt instruments – the CDA and WA – introduced in 2004, show similar promise because of the strong features included in the legal framework. Overall, the framework for the CDA and WA contains several aspects that make these instruments attractive to lenders and to other parties seeking to trade in commodities. Issuances and transfers must be recorded in a central registry maintained by the Central Bank of Brazil, which reduces the risk of fraud and facilitates trading.

The format of receipts is clearly defined by legislation. Most importantly, legislation provides for quick extra-judicial enforcement and public auction to satisfy debts secured by the WA. In addition, the system is backed up with strong penalties for infractions that include monetary fines, certification suspensions and cancellations, and imprisonment. Mandatory guarantee requirements beyond insurance are noticeably absent. However, it is not clear that this choice will hinder the effectiveness of the system since it is compensated by insurance requirements and strong warehouse oversight.

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France

Introduction to the agricultural sector and legal framework

France is the world's second largest agricultural producer after the United States and Europe's leading agricultural producer across a wide range of agricultural and livestock products.⁴⁸⁸ With respect to Europe's main production crops, France leads in cereals (including rice), field peas, sugar beets and rape and sunflower seeds.⁴⁸⁹ France alone accounts for 23 percent of the European Union's output in cereals.⁴⁹⁰

Agricultural finance in France is currently dominated by the private entity Crédit Agricole, which had an 80 percent market share in 2009.⁴⁹¹ Crédit Agricole was established as a national agricultural bank in 1894 to address the limited availability of private credit in the agricultural sector.⁴⁹² Originally governed by a department within the Ministry of Agriculture, Crédit Agricole expanded significantly throughout the 20th century, both in terms of geographical scope and services provided to farmers. In 1963, Crédit Agricole became self-financing, and in 1966 it was given financial autonomy from the national government budget. The French government privatized Crédit Agricole in 1988, and the entity was listed on the stock market in 2001. To provide short-term financing to many of France's farmers, Crédit Agricole uses crop and livestock warrants.⁴⁹³

France is a centralized republic governed under its 1958 Constitution. The legal system derives from the civil law tradition. The warehouse warrant was introduced in French legislation in the mid-19th century⁴⁹⁴ and is today consolidated and integrated in a specific chapter in the Commercial Code.⁴⁹⁵ The main benefit of the warrant is that it allows the trader to access credit by providing the lender a pledge right over the stored

merchandise as security. Modified versions of the warehouse warrant have been introduced for specific sectors, among them the agricultural warrant (*warrant agricole*, also referred to as *crédit-stockage*). The agricultural warrant was introduced to support farmers by facilitating their access to credit. Today it is regulated by the Rural Code (Code rural et de la pêche maritime).⁴⁹⁶ It does not require that agricultural produce be stored in a warehouse. Its innovation *vis-à-vis* the general warehouse warrant and, more generally, French law on pledges is that it allows farmers as pledgers to have continued possession of the pledged property.⁴⁹⁷ However, most wheat, for example, was stored not by the farmer but by millers or merchants mostly against commercial warrants, not agricultural warrants.⁴⁹⁸

Warehouse receipt legislation

French law concerning the regulation of warehouses generally (not only agricultural warehouses) and the issuance of warehouse receipts and warrants is codified in the Commercial Code.⁴⁹⁹ These provisions are organized into seven sections: warehouse authorization, assignment and cessation of operation; obligations; responsibilities and guarantees; warehouse operation and supervision; receipts and warrants; and sanctions.⁵⁰⁰ Agricultural warehouses in particular are not treated separately by specific legislation or regulations.

Agricultural warrants are regulated in the Code rural et de la pêche maritime under Title IV: Financement des exploitations agricoles.⁵⁰¹ Its innovation *vis-à-vis* the general warehouse warrant is that it allows the farmer as pledger

⁴⁸⁸ See Eurostat, 2012, pp. 84, 85.

⁴⁸⁹ See *ibid.*, p. 87.

⁴⁹⁰ Eurostat, 2011, p. 1.

⁴⁹¹ Agwe & Fissaha, 2009, p. 9.

⁴⁹² Loi du 5 novembre 1894; see also, Crédit Agricole, 2009.

⁴⁹³ See Perron, 2009.

⁴⁹⁴ See Baubeau, 2007, p. 8.

⁴⁹⁵ See Arts. L522-1 to L522-40 and R522-1 to R522-25, C. comm.

⁴⁹⁶ See Arts. L342-1 to L342-17, Code rural et de la pêche maritime.

⁴⁹⁷ Baubeau, 2007, p. 2.

⁴⁹⁸ See *ibid.*, p. 19.

⁴⁹⁹ See Arts. L522 and R522 C. comm. The provisions were introduced in the Commercial Code in 2000 through the Ordonnance n° 2000-912 du 18 septembre 2000 relative à la partie législative du code de commerce, that abrogated the Ordonnance n°45-1744 du 6 août 1945 relative aux magasins généraux, which contained the provisions governing warehouses, warehouse receipts and warrants and integrated them into the Commercial Code.

⁵⁰⁰ See Art. L522, C. comm.

⁵⁰¹ See Arts. L342-1 to L342-17, Code rural et de la pêche maritime.

to have continued possession of the pledged property.⁵⁰²

Scope. The Commercial Code contains a chapter governing the regulation of warehouses and warehouse receipts and warrants.⁵⁰³ This chapter applies to any general warehouse where manufacturers, traders, farmers or craftsmen store raw material, merchandise, foodstuffs or manufactured products and that issues negotiable security notes.⁵⁰⁴

The rural code contains specific provisions for agricultural pledges. The farmer can pledge agricultural products, even before harvest, as well as the material used for agricultural production. He or she may keep the pledged goods on his or her premises and entrust the deposit either to the syndicates or agricultural companies that he or she is a member of or to third persons designated in an agreement with the lender.⁵⁰⁵

Institutional structure. The Council of State (*Conseil d'Etat*) issues the implementing decrees on warehouse operations.⁵⁰⁶ The National Federation of Logistics Providers and authorized general warehouses prepare the standard regulations (*règlements types*)⁵⁰⁷ governing warehouse operations and submit them for approval to the minister in charge of industry.⁵⁰⁸

The local prefect and the General Inspectorate of Industry and Trade are the oversight authorities. The prefect is responsible for authorizing general warehouses.⁵⁰⁹ The Commercial Code entrusts the local prefect and the General Inspectorate of Industry and Trade with monitoring the activities of authorized general warehouses and controlling the lawfulness of their operations, including

audit and investigations.⁵¹⁰ General warehouses are also subject to general police measures concerning public places of trade.⁵¹¹

Authorization and oversight of warehouses.

Prefect authorization is required before a warehouse operator can name his or her establishment as a general warehouse (*magasin général*) and issue negotiable security instruments.⁵¹² The regulatory part (*partie réglementaire*) of the Commercial Code details the procedure and conditions for authorization of general warehouses.⁵¹³ The application for authorization is deposited at the prefecture. It must be submitted with a copy of the trade and company's registries that the company is registered in; if the applicant is a company, a copy of its statute and a list of shareholders owning more than 10 percent of the share capital; a map of the premises where the warehouse will operate with a description of the nature of the operator's rights over the premises; a statement indicating the location of the establishment, its equipment, the entrances or ways of access to it and the nature and volume of the expected stored goods; and a draft of rules of operation for the establishment.⁵¹⁴ The warehouse operator must further provide a guarantee in an amount proportionate to the surface area for storage.⁵¹⁵

The prefect monitors the activities of general warehouses and controls the lawfulness of their operations. For this, he or she has free access to the establishments and can conduct necessary audits and investigations.⁵¹⁶ The General Inspectorate of Industry and Trade monitors authorized general warehouses and informs the prefect of any detected violations.⁵¹⁷ In the first month of every year, the operator of a general warehouse provides a general report on warehouse activity during the past year to the General Inspectorate of Industry and Trade of the district in which the establishment is located.⁵¹⁸

⁵⁰² Baubeau, 2007, p. 2.

⁵⁰³ Art. L522, C. comm.

⁵⁰⁴ See *ibid.*, Art. L522-1.

⁵⁰⁵ Art. L342-1, Code rural.

⁵⁰⁶ Art. L522-12 et seq., C. comm.

⁵⁰⁷ In French law, *règlement* refers to a legal text issued by the executive with a general and obligatory character. To simplify and harmonize the administrative activity, the regulatory authority may be empowered to prepare and propose standard regulations (*règlements types*). These are generally model texts formulated for the adoption of municipal or prefectural order.

⁵⁰⁸ Art. R522-13, C. comm.

⁵⁰⁹ *Ibid.*, Art. L522-1.

⁵¹⁰ *Ibid.*, Arts. R522-17 and R522-19.

⁵¹¹ *Ibid.*, Art. R522-16.

⁵¹² *Ibid.*, Art. L522-1.

⁵¹³ *Ibid.*, Arts. R522-1 to R522-11.

⁵¹⁴ *Ibid.*, Art. R522-2.

⁵¹⁵ *Ibid.*, Art. L522-12.

⁵¹⁶ *Ibid.*, Art. R522-17.

⁵¹⁷ *Ibid.*, Art. R522-19.

⁵¹⁸ *Ibid.*, Art. R522-18.

Every authorized warehouse is required to have its own set of operating rules.⁵¹⁹ Charges for storage and related services must be fixed and filed with the prefect before the opening of the warehouse.⁵²⁰ The fixed scale of charges and the operating rules of the warehouse must be displayed in a publicly accessible part of the warehouse offices.⁵²¹

Operators of general warehouses are prohibited from engaging in any trade of or speculation in the merchandise for which they are authorized to issue receipts and warrants.⁵²² The same applies to a shareholder of over 10 percent of a company operating a general warehouse.⁵²³

Contractual rights and obligations of the parties and risk allocation. The Commercial Code determines the basic obligations of general warehouse operators. They are obliged to accept from any person, merchandise for storage under the conditions set out in the Commercial Code. Standard regulations determine the operating conditions for warehouses and can limit the use of a warehouse to certain categories of merchandise. They can also allow the warehouse operator to refuse the storage of merchandise that can harm the safekeeping of other merchandise.⁵²⁴

Regulations specify the obligations of operators for the safekeeping of deposited goods, for which they are responsible.⁵²⁵ Merchandise that is suitable to be under warrant must be insured against fire through the warehouse's general insurance policy.⁵²⁶ Warehouses are not liable for natural damages and losses resulting from the nature or packaging of the merchandise or from *force majeure*.⁵²⁷

Performance guarantees. Warehouse performance is guaranteed through the obligation of the warehouse operator to provide a guarantee

of an amount proportionate to the surface area for storage, to be determined as specified in the Commercial Code. This guarantee can be provided in money, in annuities, in securities traded on regulated markets or by a first mortgage on the estate in an amount that is double the value of the guaranteed amount. It can likewise be provided by an authorized credit establishment or listed financial institutions or establishments.⁵²⁸

Warehouse receipts. Upon deposit, a receipt shall be issued to the depositor with a warrant as a security instrument attached to it.⁵²⁹ This receipt-warrant (*récépissé-warrant*) has two parts, the receipt (*récépissé*) that is the ownership title of its bearer for the merchandise and the warrant that states the security on the merchandise for its bearer. The goods stored in the warehouse can be pledged by issuing a warrant as a non-possessory security. Receipts state the following:

- the name, occupation and address of the depositor;
- the nature of the deposited merchandise;
- the appropriate identification and value of the merchandise.⁵³⁰

The attached warrant must have the same wording as the receipt.⁵³¹ On the front of warehouse receipts and warrants is a reference to the fire insurance policy that covers the merchandise.⁵³² If fungible merchandise is deposited, both the warehouse receipt and the warrant must mention the possibility that underlying fungible goods can be replaced with goods of the same nature, type and quality.⁵³³ A holder of both a receipt and a warrant can request that separate receipts and warrants be issued for smaller batches of large deposits.⁵³⁴

The Commercial Code does not specify form requirements. Receipts and attached warrants

⁵¹⁹ Ibid., Art. L522-17.

⁵²⁰ Ibid., Arts. L522-18 and L522-19.

⁵²¹ Ibid., Art. L522-23.

⁵²² Ibid., Art. L522-5.

⁵²³ Ibid., Art. L522-6.

⁵²⁴ Ibid., Art. R522-13.

⁵²⁵ Ibid., Art. L522-15.

⁵²⁶ Ibid., Art. L522-16.

⁵²⁷ Ibid., Art. L522-15.

⁵²⁸ Ibid., Arts. L522-12 and R522-11.

⁵²⁹ Ibid., Arts. L522-24 and L522-25.

⁵³⁰ Ibid., Art. L522-24.

⁵³¹ Ibid., Art. L522-25.

⁵³² Ibid., Art. R522-20.

⁵³³ Ibid., Art. L522-24.

⁵³⁴ See *ibid.*, Arts. L522-24 and R522-21.

Box 10: At a glance – France’s warehouse receipts legislation

Key legislation: Relevant provisions are contained in the Commercial Code and the Rural and Fisheries Code.

Scope: Raw material, merchandise, foodstuffs or manufactured products.

Institutional structure: The local prefect and the General Inspectorate of Industry and Trade are the oversight authorities.

Authorization and oversight of warehouses: Prefect authorization is required before a warehouse operator can describe his or her establishment as a general warehouse and issue negotiable security instruments. Operators of general warehouses are prohibited from engaging in any trade of or speculation in the merchandise for which they are authorized to issue receipts and warrants.

Guarantees: Warehouse operators are required to post a guarantee in the form of money, in annuities, in securities traded on regulated markets or by a first mortgage on the estate in an amount that is double the value of the guaranteed amount. It can likewise be provided by an authorized credit establishment or listed financial institutions or establishments.

Contractual rights and obligations of the parties and risk allocation: The Commercial Code determines the basic obligations of general warehouse operators. Warehouses are not liable for natural damage and losses resulting from the nature or packaging of the merchandise or from *force majeure*.

Warehouse receipts: France’s receipt-warrant has two parts: the receipt that is the ownership title of its bearer for the merchandise and the warrant that states the security on the merchandise for its bearer.

Transferability of warehouse receipts: Receipts and warrants can be transferred by endorsement, either together or separately. There is no central registry, but the first endorsement must be recorded at the warehouse.

Settlement and release of stored goods: The deposited goods will only be released upon presentation of both the receipt and warrant. The holder of a receipt can pay the amount of the warrant before the due date of the documents.

Execution and priority of obligations: France allows for out-of court execution procedures by providing for a public sale after eight days’ notice.

Offenses and penalties: France provides revocation of authorization, fines and imprisonment for violations of warehouse rules and rules related to warehouse receipts.

are registry extracts.⁵³⁵ The administration of the warehouse shall maintain a record book of receipts and warrants, apart from the regular trading records.⁵³⁶

Transfer of warehouse receipts. Receipts and warrants can be transferred by endorsement, either together or separately.⁵³⁷ The endorsement of a warrant separated from the receipt constitutes a pledge on the merchandise in favour of the transferee of the warrant. The endorsement of a receipt transfers the right to dispose of the merchandise. If the receipt is transferred without the warrant, the transferee is liable for the payment of the debt secured by the warrant or must agree that the debt be settled from the proceeds of the merchandise’s sale.⁵³⁸

The endorsement of a receipt and a warrant must be dated. Additionally, the endorsement of a warrant separated from its receipt must indicate the full amount, capital and interest of the secured debt; the date of its maturity; and the name, occupation and address of the creditor. The first transferee of the warrant shall immediately initiate the transcription of the endorsement, which is written in the warehouse’s record books. This transcription is also indicated in the warrant so that the pledge becomes enforceable against third persons.⁵³⁹

Finally, the Commercial Code allows warehouse operators to extend credit against a pledge on the goods deposited with them and trade in the warrants representing the said goods.⁵⁴⁰

Settlement and release of stored goods. Both the receipt and the warrant must be presented for merchandise to be released from the general warehouse. The holder of a receipt separated from the warrant may pay the debt secured by the warrant, even before maturity, to retrieve the stored goods.⁵⁴¹

⁵³⁵ Ibid., Art. L522-25.

⁵³⁶ Ibid., Art. R522-24.

⁵³⁷ Ibid., Art. L522-26.

⁵³⁸ Ibid., Art. L522-28.

⁵³⁹ Ibid., Art. L522-29.

⁵⁴⁰ Ibid., Art. L522-20.

⁵⁴¹ Ibid., Art. L522-30.

Execution and priority of obligation. In the event of non-payment of the underlying debt at maturity, the bearer of a warrant separated from the receipt can, eight days after notice and without any judiciary formality, initiate the public sale of the stored merchandise by public officials, in accordance with the applicable provisions for public wholesale auctions. The same applies to an original signatory of the warrant who has paid the bearer and may initiate the sale of the merchandise against the receipt holder.⁵⁴²

The creditor on the pledged warrant is satisfied first from the proceeds, directly and without judiciary formalities, and is privileged over all other creditors. There are no other deductions before the creditor is paid except for taxes, storage and sale expenses.⁵⁴³ Warrant holders have no right of action against the debtor or the endorser until pledged goods are sold and if the proceeds are insufficient to cover the debt. The right of action against endorsers is forfeited if the public sale does not occur within one month after protest.⁵⁴⁴

Offences and penalties. The Commercial Code prohibits the operation of an establishment that receives merchandise for storage against which negotiable security notes are issued to the depositors without the required authorization. Any violation of this prohibition may be punished by a fine of up to EUR 6 000 or one year imprisonment. The court can order the publication of the judgment.⁵⁴⁵ If the warehouse operator violates the provisions of the Commercial Code on warehouses or its implementing decrees issued by the Council of State, the prefect may declare temporary or permanent revocation of the warehouse's authorization.⁵⁴⁶

Conclusion

The legal framework for warehouse receipts in France represents the prototypical civil law regime, developed and institutionalized over the past 150 years in response to the

country's longstanding needs as a producer of agricultural commodities. France's legal system has influenced many civil law systems around the world, and its system for warehouse receipts is mostly consistent with traditional warehouse receipt legislation found in other civil law countries. Obligations for warehouse operators are clearly defined in the Commercial Code, which places a clear duty of care on the warehouse operator and relieves that duty in cases of *force majeure*. Notably and consistent with its governance tradition, France has largely decentralized the authorization and oversight of warehouses and pushed those duties down to the local level of administration.

France long ago instituted a two-part receipt system that today can be found in many civil law countries around the world. Separating title to the goods from the pledge right on those goods is viewed as a major innovation in commodity-based finance, because the receipt and warrant are separately transferable. Clear and basic rules are established for the content of receipts, as well as the procedure for transfer of receipts. Most importantly, the law strongly protects creditors and warrant holders in case of debtor default by providing for a public sale after eight days' notice outside court procedures and privileging the creditor over all other creditors for satisfying his claim out of the public sale.

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⁵⁴² Ibid., Art. L522-31.

⁵⁴³ Ibid., Art. L522-32.

⁵⁴⁴ Ibid., Art. L522-33.

⁵⁴⁵ Ibid., Art. L522-38.

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India

Introduction to the agricultural sector and legal framework

India's legal system is based on English common law. It is governed by the Constitution of 1949. India is a democratic federal republic and legislative and executive power is exercised at both the federal and state levels.

Agriculture is a significant contributor to economic development in India. It contributes 17.4 percent to the gross domestic product (GDP) and employs 51.1 percent of the economically active population.⁵⁴⁷ The most important agricultural commodities produced in India between 2009 and 2011 include sugar cane, approximately 307 million tons produced per year; rice, approximately 146 million tons per year; wheat, an estimated 83 million tons per year; potatoes, approximately 38 million tons per year; fresh vegetables, approximately 29 million tons per year; bananas, 29 million tons per year; and maize, 20 million tons per year.⁵⁴⁸ These commodities have been essentially domestic-focused and highlight the importance of internal markets.

Food price inflation is a major challenge for India. Furthermore, the agricultural sector faces seasonal price variations for agricultural produce, with low prices after harvest that subsequently rise. While there are generally sufficient food grains to feed the population, the efficiency of the supply chain is a problem for the Indian agricultural sector. It is estimated that about 20 to 25 percent of the food grains produced in India are wasted due to improper or inadequate storage, and almost double that percentage is wasted of perishable commodities, such as vegetables and fruits. In addition, according to the chairman of India's Warehousing Development and Regulatory Authority, "farmers used to engage in panic sales since they were in dire need of money immediately after the harvest primarily to pay off many of the loans they had taken for agriculture. They had little bargaining

power against the local trader since farmers had no space to store the food grains safely."⁵⁴⁹

The Indian government considers the agricultural sector to be critical in achieving national development goals, notably ensuring that the population has access to affordable food. In this sense, several national policies were introduced to limit food price inflation and provide, at the same time, minimum and fair prices to farmers. In fact, the parliament of India has recently passed new legislation. The new National Food Security Act of 2013 envisages food and nutritional security and subsidies for food supplies to an estimated two-thirds of the rural population and half of the urban population. Based on this programme, beneficiaries receive five kilograms of subsidized rice, wheat and coarse grains per month. The state-run Food Corporation of India is assigned the task of distributing the grains through a network of food shops. The National Food Security Act is also likely to positively impact farmers' income as the demand for grains increases, boosted by the subsidy programme.

In this context, the Indian Parliament enacted The Warehousing (Development and Regulation) Act (hereafter "the Act") in 2007, which came into force on 25 October 2010.⁵⁵⁰ Before this, warehousing was long established in India, and the warehouse receipt system was based on certain provisions of the Agricultural Produce (Development & Warehousing) Act of 1956, which was later replaced by the Warehousing Corporations Act in 1962. However, difficulties plagued the system. Depositors and banks did not have confidence in warehouse receipts and feared that they would not be able to recover their loan in case of warehouse default, and the available legal remedies were inadequate.⁵⁵¹

Under the 2007 Act, the government created the Warehousing Development and Regulatory Authority (hereafter "the Authority") as the regulatory and oversight body tasked with

⁵⁴⁷ For 2012 and 2010, respectively. Latest available data from World Bank Indicators.

⁵⁴⁸ FAOSTAT, 2014.

⁵⁴⁹ Misra, 2011.

⁵⁵⁰ Notification for enforcement of the Warehousing (Development & Regulation) Act, 2010.

⁵⁵¹ See Pattanaik, 2008.

implementing and promoting the warehouse receipt system. The Act also introduced the negotiable warehouse receipt system. Among the objectives behind this initiative were to improve storage capacity in India; to facilitate better access to credit for farmers; to increase returns for farmers by preventing them from selling their produce immediately after harvest when prices are low; and to serve financial institutions by mitigating the risk that accompanies lending to farmers.

Reducing risk to financial institutions would, in turn, reduce farmers' credit costs and increase credit flow to rural areas. The warehouse receipt system would also lead to standardization of warehousing practices – grading, packaging, etc. – and insurance practices, and would foster the development of quality warehousing.⁵⁵² It would also enhance opportunities for agricultural trade through spot and future commodity exchanges. Finally, the system could help stabilize agricultural commodity prices by enabling farmers to postpone selling their produce until after harvest so as to not flood the market at harvest time.

The Act is considered crucial for the Indian warehouse sector in that it organizes and shapes warehousing transactions⁵⁵³ and attracts the interests of lending institutions.⁵⁵⁴ The logistics and warehousing industry has welcomed the creation of the Authority under the Act and considers it an important development in the sector.⁵⁵⁵ As of December 2011, 404 warehouses from different states applied for registration with the Authority, and as of August 2013, 351 warehouses were registered under the Act.⁵⁵⁶

There are still challenges in implementing the new warehouse receipt system. One concern is whether and to what extent the system will benefit small-scale and marginal farmers who usually have only small quantities of commodities to store in a warehouse and thus might not

be attractive to warehouses. Another concern is the limitation on the Authority's power over spot exchanges for agricultural commodities. Spot exchanges fall under the power of state governments, so the Authority's powers are limited and cannot intervene to resolve trading irregularities in a spot exchange.⁵⁵⁷

A further challenge is to promote and increase participation in the system. To inform stakeholders and raise awareness of the new Act, the Authority organized a country-wide awareness campaign.⁵⁵⁸ It also organizes training programmes for managers of registered warehouses, accreditation agencies and farmers to promote and inform the potential users of the negotiable warehouse receipt system.⁵⁵⁹ In quarterly bulletins, the Authority distributes information on its activities, training programmes and other news relevant for the warehousing sector. "For popularizing negotiable warehouse receipts among farmers," the Authority recently initiated a scheme with prizes and awards for warehouse managers of registered warehouses, banks and farmers.⁵⁶⁰

Warehouse receipt legislation

The negotiable warehouse receipt system is regulated at federal level and not by each state, which ensures harmonization across the country. The Act applies to the whole country except the states of Jammu and Kashmir.⁵⁶¹ It provides the negotiability of warehouse receipts, prescribes the form and modalities for the registration of warehouses intending to issue negotiable warehouse receipts, details the modalities for issuing warehouse receipts including electronically and designates the Authority as the regulatory body in charge of warehouse registration.

The Act is structured in 11 chapters addressing preliminary provisions; the regulation of warehousing business; duties and rights of

⁵⁵² Ministry of Consumer Affairs, Food & Public Distribution, 2010.

⁵⁵³ Ravi, 2013.

⁵⁵⁴ Vadodara, 2009.

⁵⁵⁵ Misra, 2011.

⁵⁵⁶ WDRA Bulletin No. 3 of 2011; Details of Warehouses Registered with WDRA (02.08.13), available at <http://wdra.nic.in/default.htm>.

⁵⁵⁷ Misra, 2011.

⁵⁵⁸ Department of Food & Public Distribution, 2013.

⁵⁵⁹ See the bulletins of the WDRA for information on its activities.

⁵⁶⁰ The WDRA, Scheme for prizes and awards, Circular No. 1/2013.

⁵⁶¹ See Sec. 1, The Warehousing (Development and Regulation) Act, 2007.

warehouse operators; warehouse receipts; the Warehousing Development and Regulatory Authority; powers and functions of the Warehousing Development and Regulatory Authority; finance, accounts and audit; powers of the Central Government; appeals; offences and penalties; and miscellaneous provisions.

Under the Act, the Authority has issued, in consultation with the Warehousing Advisory Committee and with previous approval of the Central Government, four regulations containing further details on the registration of accreditation agencies; negotiable warehouse receipts; warehouse accreditation; and meetings of the Authority.⁵⁶² Additionally, the Central Government issued several rules implementing the Act on the Annual Statement of Accounts and Records of the Authority, Authority Annual Report and Returns Rules, Appellate Authority Procedure and Registration of Warehouses. Finally, the Authority has also prepared the Warehouse Manual for Operationalizing of Warehousing Act (2011), which covers how to operate the provisions of the Act and contains detailed information about its factual implementation, as well as training programmes.

Scope. The Act covers the regulation of warehouses, warehouse receipts and their negotiability, the establishment and functions of the Warehousing Development and Regulatory Authority and related matters. It defines a warehouse receipt as “an acknowledgement in writing or in electronic form issued by a warehouseman or his duly authorized representative (including depository by whatever name called) of the receipt for storage of goods not owned by the warehouseman.”⁵⁶³ Goods under the Act are “all tangible movable goods (other than actionable claims, money and securities), whether fungible or not.”⁵⁶⁴ Accordingly, warehouse receipts could generally be issued for agricultural or other commodities.

Initially, however, the Authority focused on agricultural commodities.⁵⁶⁵ First, in a 2011 circular, it identified 75 commodities that negotiable warehouse receipts can be issued for, which include pulses, cereals, vegetable oils, oilseeds, edible nuts, spices and Makhana.⁵⁶⁶ To ensure that fruits and vegetables are also brought under the new warehouse receipt system, the Authority then focused on promoting the cold chain. By a second circular, the Authority introduced a negotiable warehouse receipt system in cold storage warehouses for the major horticulture produce sector in India “so that the farmers producing horticulture crops may also avail the benefit of loans from the banks against the deposit of their produce in the registered warehouses (cold storages).”⁵⁶⁷ Twenty-six horticulture commodities can be issued negotiable warehouse receipts by registered warehouses (cold storage), among them are seed potatoes, Nagpur Mandarin, carrots, lemons, pomegranate and grapes.

Institutional structure The Act contains detailed provisions that clearly define the institutional structure of the warehouse receipt system. It constituted the Authority under the Ministry of Consumer Affairs, Food and Public Distribution as the regulatory body,⁵⁶⁸ which was established in 2010 by notification of the Central Government (to perform its functions for the development and regulation of warehouses and warehouse receipts and to promote an organized growth of the warehousing business).⁵⁶⁹ The Act describes the Authority’s composition, internal structure, rules on personnel and work.⁵⁷⁰ The Authority consists of one chairperson and not more than two other members, who are appointed by the Central Government.⁵⁷¹ The employees of the Authority are, in exercising their functions under the Act, deemed public servants.⁵⁷² Regulations

⁵⁶⁵ Misra, 2011.

⁵⁶⁶ The WDRA, Circular No. 2/2011.

⁵⁶⁷ WDRA Circular No. 1/2012.

⁵⁶⁸ Sec. 24, Warehousing Act, 2007.

⁵⁶⁹ Notification for Constitution of WDRA, 2010. See also, WDRA, Composition of the Authority, available at <http://wdra.nic.in/default.htm>.

⁵⁷⁰ Sec. 24-34, Warehousing Act, 2007.

⁵⁷¹ Ibid., Sec. 25.

⁵⁷² Ibid., Sec. 46.

⁵⁶² The WDRA (Registration of Accreditation Agency) Regulations, 2011; (Negotiable Warehouse Receipts) Regulations, 2011; (Warehouse Accreditation) Regulations, 2011; (Meetings) Regulations, 2012.

⁵⁶³ Sec. 2(u), Warehousing Act, 2007.

⁵⁶⁴ Ibid., Sec. 2(i).

contain further provisions for the meetings and internal working procedures of the Authority.⁵⁷³

In addition, the Act determines in detail the powers and functions of the Authority. The Authority is generally entrusted to regulate and ensure implementation of the Act. Its powers and functions include, among others: issuing, modifying, suspending or withdrawing the certificates of registration for warehouses; regulating the registration and function of the accreditation agency; specifying the required qualifications, the code of conduct and the necessary trainings for warehouse operators and warehousing personnel; regulating the rates, terms and conditions warehouse operators can offer for warehousing; maintaining a panel of arbitrators for disputes between warehouses and warehouse receipt holders; and specifying the warehouse operator's duties and responsibilities.⁵⁷⁴ It can, with approval of the Central Government and in consultation with the Warehousing Advisory Committee, make regulations for implementing the Act.⁵⁷⁵

On its homepage the Authority publishes its annual report to be presented to each House of Parliament, which contains the information on the Authority's composition, key initiatives on regulatory issues and audited annual statement of accounts that must be forwarded to the Central Government according to the Warehousing (Development and Regulatory) Authority Annual Report and Return Rules of 2010.⁵⁷⁶ Circulars and other regulatory decisions of the Authority are not only published on the homepage of the Authority's website and distributed to the Department of Agriculture and Cooperation and all accreditation agencies of the Authority, but also sent by standard distribution to all banks, including state cooperative banks and the Reserve Bank of India.

The Authority has chosen eight accreditation agencies, four in the private sector and four

in the public sector.⁵⁷⁷ While the Authority is responsible for the warehouses' final registration, the accreditation agencies are responsible for their pre-accreditation, which warehouses need before they can register with the Authority. The accreditation agencies ensure that warehouses store commodities safely and index commodities according to applicable quality standards and expiry dates. The Authority's procedure to register the accreditation agencies and the procedure and conditions for its suspension, cancellation and revocation are set out in the implementing regulations.⁵⁷⁸

The Act also empowers the Authority to constitute an advisory body called the Warehousing Advisory Committee (hereafter "the Committee"), to advise the Authority on the technical matters involved in issuing regulations as well as to make recommendations for implementing the Act. The Committee shall comprise a maximum of 15 members representing the interest of various stakeholders, namely commerce, industry, engineering, agriculture, consumers and organizations engaging in warehousing, quality control, preservation and research entities.⁵⁷⁹

The Act has created the Warehousing Development and Regulatory Authority Fund, which is credited by Central Government grants, fees and charges received by the Authority, the monetary fines received for penalties of the Act and other sources determined by the Central Government. This fund finances the Authority's work and personnel.⁵⁸⁰ Further provisions determine the accounts and audit rules for the Authority.⁵⁸¹

Finally, the Central Government can issue binding directions to the Authority on policy matters other than technical and administrative, after giving the Authority the opportunity to express its views. The Central Government's decision is

⁵⁷³ The WDRA (Meetings) Regulations, 2012.

⁵⁷⁴ Sec. 35, Warehousing Act, 2007.

⁵⁷⁵ Ibid., Sec. 50.

⁵⁷⁶ See homepage of the WDRA, Annual Reports, available at <http://wdra.nic.in/default.htm>.

⁵⁷⁷ See *ibid.*

⁵⁷⁸ The WDRA (Registration of Accreditation Agency) Regulations, 2011.

⁵⁷⁹ Sec. 34, Warehousing Act, 2007.

⁵⁸⁰ Ibid., Sec. 37.

⁵⁸¹ Ibid., Arts. 38 et seq.

final.⁵⁸² If the Authority is unable to discharge its functions according to the Act, the Central Government can, by notification, supersede the Authority for a period that does not exceed six months and nominate a person to assure its functions. This can also happen if the Authority persistently defaults in its functions under the Act or fails to comply with a direction from the Central Government, which could result in a loss of finances, or if public interest requires it. Before a supersession, the Authority has the opportunity to represent itself against the considered supersession.⁵⁸³ The Central Government must submit a copy of the notification with a report of any action to the House of Parliament.⁵⁸⁴

The Central Government further appoints a person or authority as appellate body responsible for deciding appeals lodged against orders of the Authority.⁵⁸⁵ Finally, it is empowered to make rules, by notification, for implementing the Act, *inter alia* on the form and procedure for warehouses applying for a certificate of registration to issue negotiable warehouse receipts, the conditions for obtaining a warehouse registration and the form of the warehouses' certificate of registration.⁵⁸⁶

Registration and oversight of warehouses. The Act stipulates that no person shall commence or operate a warehousing business without a registration certificate granted by the Authority. It defines a warehousing business as "the business of maintaining warehouses in storage of goods and issuing negotiable warehouse receipts". No registration is required for warehouses not issuing negotiable warehouse receipts.⁵⁸⁷

Persons interested in registering a warehouse must apply to the Authority in the form and manner prescribed by the implementing rules to the Act.⁵⁸⁸ The Authority will only grant a

certificate of registration if it is satisfied that the warehouse has adequate facilities and the safeguards necessary for storing the goods specified in the application, and that the applicant meets the financial, managerial, competence and other requirements as prescribed.⁵⁸⁹ The Authority may subsequently modify, suspend or cancel the certificate.⁵⁹⁰ Additionally, every applicant for warehouse registration must furnish to the Authority a security deposit (by bank draft or a banker's cheque) from any national bank at rates specified in the implementing rules.⁵⁹¹

Further, the applicant must obtain a certificate of accreditation from an accreditation agency to be registered by the Authority.⁵⁹² The Warehousing Development and Regulatory Authority's (Warehouse Accreditation) regulations of 2011 determine the conditions for a warehouse to obtain a certificate of accreditation from any accreditation agency. The conditions include the proof of ownership or registered lease vesting the applicant the right to use the premises for operating a warehouse; insurance policies for fire, flood, theft, burglary, riots etc.; insurance policies for the stored goods; construction standards; and trained personnel.⁵⁹³ By circular, the Authority provides further requirements for the accreditation of cold storage warehouses and indicates five government organizations it approved as their accreditation agencies.⁵⁹⁴

A list of all registered warehouses in India is publicly available on the homepage of the Authority's website, along with their details: the serial number, warehouse centre, name of the warehouse operator, registration number, name of the accreditation agency, the registered capacity and the negotiable warehouse receipt number. As of August 2013, 351 warehouses were registered with the Authority.⁵⁹⁵

⁵⁸² Ibid., Sec. 40.

⁵⁸³ Ibid., Sec. 41(1).

⁵⁸⁴ Ibid., Sec. 41(4).

⁵⁸⁵ Ibid., Sec. 42(1). The Warehousing (Development and Regulation) Appellate Authority Procedure Rules, 2010, set out the procedure and conditions for appeals under the Act.

⁵⁸⁶ Sec. 50, Warehousing Act, 2007.

⁵⁸⁷ Ibid., Sec. 3(1).

⁵⁸⁸ Ibid., Sec. 4(1) and (2). Also see The Warehousing (Development and Regulation) Registration of Warehouses Rules, 2010.

⁵⁸⁹ Sec. 4(4), Warehousing Act, 2007. The requirements are further specified by rules issued by the Central Government, Ibid., Sec. 50(2)(c).

⁵⁹⁰ Ibid., Sec. 35(2)(a).

⁵⁹¹ Sec. 6, Warehousing (Development and Regulation) Registration of Warehouses Rules, 2010.

⁵⁹² Sec. 3, WDRA (Warehouse Accreditation) Regulations, 2011.

⁵⁹³ Ibid.

⁵⁹⁴ WDRA Circular No. 1/2012.

⁵⁹⁵ See WDRA homepage, Details of Warehouses Registered with WDRA (02.08.13), at <http://wdra.nic.in/default.htm>.

Inspection is entrusted to both the Authority and the accreditation agencies. The Authority, which has primary oversight authority, inspects warehouses, accreditation agencies and other organizations connected with the warehousing business. It investigates warehouses (and matters related to the warehousing business) and audits.⁵⁹⁶ The warehouse operator is obliged to provide the Authority with the warehouse records and accounts whenever it requires.⁵⁹⁷

Implementing regulations further detail the duties and procedures for the accreditation agency's warehouse inspections.⁵⁹⁸ Before granting a warehouse accreditation, the agency appoints one or more persons to inspect the warehouse to ensure that the accreditation conditions are met. After accreditation, the agency can inspect the registered warehouse (with regards to its conditions, books or accounts and other records and documents) once every year to ensure compliance with the Act's provisions and its rules and regulations. If the periodic inspection shows that the warehouse does not meet the requirements, the accreditation agency can suspend or cancel the certificate of accreditation.⁵⁹⁹ In this case, the Authority either suspends or cancels the warehouse registration or orders another accreditation agency to conduct an inspection and decides, on its outcome, if it is a suspension or cancellation.⁶⁰⁰

Accreditation agencies must ensure that their examiners are competent for warehouse inspection or accreditation, maintain inspection records and prevent any conflict of interest in the granting of an accreditation or conducting inspections.⁶⁰¹

A registered warehouse has the duty to keep records and accounts of all transactions related to the warehouse operation in a safe place, including those that refer to all stored and

released goods, and all issued, cancelled or returned warehouse receipts.⁶⁰²

Contractual rights and obligations of the parties and risk allocation. The Act sets out the basic obligations and duties of warehouse operators. A warehouse operator has to deliver the goods indicated in a negotiable receipt to the receipt holder upon the latter's demand, if the holder has satisfied the warehouse lien, surrendered the receipt in case of a non-negotiable receipt or the receipt with endorsement in case of a negotiable receipt, and acknowledged in writing receipt of the goods.⁶⁰³

The Act determines the warehouse operator's duty of care with respect to the stored goods. A warehouse operator shall exercise the care and diligence of a careful and vigilant owner of the goods.⁶⁰⁴ Specific provisions detail the storage of perishable and hazardous goods.⁶⁰⁵ The Act does not address whether goods covered by different receipts must be kept separate from each other in the warehouse or when goods can be commingled.

A warehouse operator is liable for loss or damage of stored goods that is caused by failure to exercise the care and diligence a careful and vigilant owner would exercise. The amount of compensation is the value of the goods at time of deposit plus the receipt holder's lost profit.⁶⁰⁶ In case of loss or damage of goods due to unavoidable circumstances despite exercising such care, the warehouse operator is liable for a compensation of an amount of the goods' value at the time of deposit, except in case of *force majeure*, acts of war or the like.⁶⁰⁷

Warehouse receipts. Under the Warehousing Act, a warehouse receipt constitutes a document of title to goods, provided that the receipt meets certain criteria that are enumerated in the statute.⁶⁰⁸ Only warehouse operators

⁵⁹⁶ Sec. 35(2)(i), Warehousing Act, 2007.

⁵⁹⁷ Ibid., Sec. 8(3).

⁵⁹⁸ Sec. 5-9, WDRA (Warehouse Accreditation) Regulations, 2011.

⁵⁹⁹ Ibid., Sec. 10.

⁶⁰⁰ Ibid., Sec. 11.

⁶⁰¹ Ibid., Sec. 14.

⁶⁰² Sec. 8, Warehousing Act, 2007.

⁶⁰³ Ibid., Sec. 7(1).

⁶⁰⁴ Ibid., Sec. 6(1) and (3).

⁶⁰⁵ Ibid., Sec. 9.

⁶⁰⁶ Ibid., Sec. 6(1) and (3).

⁶⁰⁷ Ibid., Sec. 6(2) and (4).

⁶⁰⁸ Ibid., Sec. 11(1).

registered under the Act can issue negotiable warehouse receipts, while the issuance of non-negotiable warehouse receipts does not require registration.⁶⁰⁹ A negotiable warehouse receipt under the Act means “a warehouse receipt under which the goods represented therein are deliverable to the depositor or order, the endorsement which has the effect of transfer of goods represented thereby and the endorsee for which takes a good title.”⁶¹⁰ A non-negotiable warehouse receipt means “a warehouse receipt other than a negotiable warehouse receipt.”⁶¹¹ If a warehouse operator issues a non-negotiable warehouse receipt, he or she must ensure that it is marked on its front as non-negotiable.⁶¹²

Warehouse receipts can be issued in paper or electronic form.⁶¹³ The implementing regulations provide the standardized format for negotiable warehouse receipts in paper form under Section 11 of the Act.⁶¹⁴ Warehouse receipts must contain several minimum details:

- receipt number;
- warehouse registration number and date up to which the registration is valid;
- name of the warehouse and its postal address;
- name and address of the person by whom or on whose behalf the goods are deposited;
- date of issue of the warehouse receipt;
- statement that the goods received shall be delivered to the holder of the receipt, or that the goods shall be delivered to the order of a named person;
- rates of storage charges and handling charges;
- description of the goods or of their packages with particulars of quantity and quality or grade;
- market value of the goods at the time of deposit;

- private marks of depositor on the goods or packages, if any, except in the case of fungible goods;
- name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riots, strikes or terrorism;
- whether the warehouse receipt is negotiable or non-negotiable;
- statement of the amount of any advance made and of any liability incurred for which the warehouse operator claims lien;
- date and signature of the warehouse operator or authorized agent;
- declared shelf-life of goods;
- statement that the warehouse operator holds the lien on the goods deposited for storage and handling charges;
- the validity of the receipt is until the expiry date of the goods’ declared shelf-life.⁶¹⁵

The Authority may, with approval of the Central Government, modify this list of details for all or specific commodities, classes of commodities or classes of warehouses.⁶¹⁶

There are further regulations for negotiable warehouse receipts issued in paper form, not applicable to electronic receipts.⁶¹⁷ These regulations set out the system for negotiable (paper) warehouse receipts and their record-keeping. The Authority is the sole repository and maintains the negotiable warehouse receipt books. It issues these books under an allocated serial number to each registered warehouse and controls the books’ records.⁶¹⁸ A warehouse operator is required to maintain a record of issued negotiable warehouse receipts with a copy of the issued receipt; it should include relevant information such as the receipt’s total value, any transaction of the receipt and other information.⁶¹⁹

⁶⁰⁹ Ibid., Sec. 3(1).

⁶¹⁰ Ibid., Sec. 2(m).

⁶¹¹ Ibid., Sec. 2(n).

⁶¹² Ibid., Sec. 12(2).

⁶¹³ Ibid., Sec. 11(1).

⁶¹⁴ Form A, WDRA (Negotiable Warehouse Receipts) Regulations, 2011.

⁶¹⁵ Sec. 11(1), Warehousing Act, 2007.

⁶¹⁶ Ibid., Sec. 11(2).

⁶¹⁷ Sec. 2, WDRA (Negotiable Warehouse Receipts) Regulations, 2011.

⁶¹⁸ Ibid., Sec. 4.

⁶¹⁹ Ibid., Sec. 10.

Negotiation and transfer of warehouse

receipts. Negotiable warehouse receipts may be negotiated by delivery if the receipt states that the warehouse operator will deliver the goods to the order of a named person, and the latter or a subsequent endorsee has endorsed it.⁶²⁰ Any endorsement and transfer must be recorded on the back of the warehouse receipt.⁶²¹ Any transaction of a paper warehouse receipt will be written by the warehouse operator into the above-mentioned record of issued negotiable warehouse receipts.⁶²²

The person negotiating the warehouse receipt by endorsement and delivery warrants, provided that he or she would have warranted this in case of a contract on the goods' transfer without a receipt, that the receipt is genuine; he or she has the right to negotiate or transfer the receipt and has no knowledge of anything impairing the receipt's validity; he or she has the right to transfer the title to the goods; and those goods are merchantable or fit for their purpose.⁶²³ The endorser is not liable for any failure of the warehouse operator or previous endorsers to honour their obligations.⁶²⁴

The Act also foresees the possibility of good faith acquisition of a negotiable receipt. This is possible when a person sells or pledges stored goods for which a negotiable receipt has been issued but still possesses the receipt. This person then negotiates it, under any disposition of the goods, to another person who takes the receipt in good faith, for valuable consideration and without notice of the previous sale or pledge of the goods. This negotiation has the same effect as if a previous purchaser of the goods had expressly authorized the negotiation.⁶²⁵

A non-negotiable receipt may be transferred by its holder by delivery in writing to a purchaser or donee of the stored goods.⁶²⁶

Settlement and release of stored goods. A

warehouse operator delivers the goods identified in a negotiable receipt to the receipt holder upon his or her demand, after the holder has satisfied the warehouse lien, surrendered the receipt in case of a non-negotiable receipt, or the receipt with endorsement in case of a negotiable receipt for cancellation, and acknowledged in writing that the goods were received.⁶²⁷ The warehouse operator can only refuse to deliver the goods in case of a lawful excuse, which he must establish by burden of proof.⁶²⁸

The warehouse operator has a lien on the stored goods in the amount of storage and maintenance charges.⁶²⁹ If the stored goods are not taken back at the end of the agreed storage period, the warehouse operator can sell the goods on which he has a lien by public auction and recover his charges following the procedure described in the Act.⁶³⁰

Execution and priority of obligation. Neither the Act nor its regulations contain provisions on the priority of obligations in case of debtor default. Also not included is the execution of obligations in case the warehouse operator is unable to deliver the due goods or his or her insolvency. These matters are therefore governed by the general applicable legislation, and the receipt holder is not privileged *vis-à-vis* other creditors.

Offences and penalties. The Act defines offences and the corresponding penalties, particularly those for warehouse operators. A warehouse operator commits an offence if he or she knowingly issues a negotiable warehouse receipt without receiving the delivery of the goods. The offence is punishable by imprisonment for up to three years or a fine of an amount up to four times the goods' value, or both. The same penalty applies if the warehouse operator or his or her agent or servant issues a warehouse receipt without reasonably satisfying that the goods have been received and are under

⁶²⁰ Sec. 13, Warehousing Act, 2007.

⁶²¹ Sec. 5, WDRA (Negotiable Warehouse Receipts) Regulations, 2011.

⁶²² Ibid., Sec. 10.

⁶²³ Sec. 15, Warehousing Act, 2007.

⁶²⁴ Ibid., Sec. 16.

⁶²⁵ Ibid., Sec. 18.

⁶²⁶ Ibid., Sec. 20.

⁶²⁷ Ibid., Arts. 7(1) and 19.

⁶²⁸ Ibid., Sec. 7.

⁶²⁹ Ibid., Sec. 10(1) and (2).

⁶³⁰ Ibid., Sec. 10(5).

his or her control, or that the goods' number, weight or grade correspond to those indicated in the receipt.⁶³¹

Similar penalties are included for a warehouse operator or his or her agent or servant who knowingly issues a duplicate negotiable warehouse receipt without following the prescribed procedures; for a warehouse operator or his or her agent or servant who knowingly delivers the goods underlying an outstanding or uncanceled negotiable warehouse receipt without obtaining possession of the latter, and thereby causing unlawful loss or gain to any person; and for a warehouse operator who fails to deliver the due goods.⁶³²

Conclusion

While warehousing has been long established in India, the first comprehensive modern specific legislation on a warehouse receipt system was enacted in 2007. The Act introduced, for the first time, the possibility of collateralization of (agricultural) commodities with the legal backing of negotiable warehouse receipts. The new system is regulated at the national level under a federal law, as opposed to individual state laws, which ensures harmonization across the country. The Act contains most of the core elements of a warehouse system, covering warehouses as well as warehouse receipts. The creation of the Authority under the Act has been welcomed by the warehousing industry as an important development in the sector.⁶³³ As of 2013, 351 warehouses were registered with the Authority.

The new legal framework focuses on the regulation of warehouses, their set up and operation. The Act bases the negotiable warehouse receipt system on a detailed institutional structure. This helps to improve warehouse standards by requiring that warehouses be accredited and registered with the Authority (for issuing negotiable warehouse receipts) and meet specified quality and grading standards. The system of quality certification and grading further helps to protect warehouse

receipt holders against warehouse negligence, malpractice and fraud. Under the Authority, the Act foresees the accreditation agencies as complementary partners in accrediting and

Box 11: At a glance – India's warehouse receipts legislation

Key legislation: The Warehousing (Development and Regulation) Act, No. 37 of 2007.

Scope: All tangible movable goods, whether fungible or not. However, the primary focus for subsequent regulations is agricultural commodities.

Institutional structure: The Warehousing Act created the Warehousing Development and Regulatory Authority to oversee warehouse regulation and receipts.

Authorization and oversight of warehouses: The Authority, which has primary oversight authority, inspects warehouses, accreditation agencies and other organizations connected with the warehousing business.

Guarantees: Warehouse performance guarantees are not addressed in the Act and implementing subsidiary instruments.

Contractual rights and obligations of the parties and risk allocation: The Act sets out the basic obligations and duties of warehouse operators. If goods are lost or damaged due to unavoidable circumstances despite exercising the required care, the warehouse operator is liable for a compensation of an amount of the goods' value at the time of deposit, except in case of *force majeure*, acts of war or the like.

Warehouse receipts: India provides for negotiable and non-negotiable warehouse receipts in paper or electronic form.

Transferability of warehouse receipts: Negotiable warehouse receipts can be negotiated by delivery if the receipt states that the warehouse operator shall deliver the goods to the order of a named person, and the latter or a subsequent endorsee has endorsed the receipt.

Settlement and release of stored goods: A warehouse operator delivers the goods identified in a negotiable receipt to the receipt holder upon his or her demand, after the holder has satisfied the warehouse lien.

Execution and priority of obligations: The Act does not cover matters related to execution or priority of obligations.

Offenses and penalties: India provides for penalties for warehouse operators, including fines and imprisonment, for violations of warehouse rules and rules related to warehouse receipts.

⁶³¹ Ibid., Sec. 43(1).

⁶³² Ibid., Sec. 43(2)-(4).

⁶³³ Misra, 2011.

inspecting warehouses. For a federal country extending over a considerable territory like India, the two-level accreditation system helps to harmonize and control while decentralizing some of the accreditation and inspection tasks to state accreditation agencies.

Further, the Act prescribes the content of warehouse receipts, which can be issued in paper or electronic form. It regulates the settlement and release of stored goods. Finally the Act creates penalties for warehouse operators who do not follow the provisions for issuing negotiable warehouse receipts.

Notably, the Authority strongly focuses on the transparency and publicity of the system and promoting the use of negotiable warehouse receipts through awareness raising, training, conferences and initiating a prize and awards to warehouse managers of registered warehouses, banks and farmers. Transparency and publicity of the system are strengthened through the easy availability of relevant information on the Authority's homepage. In quarterly bulletins, the Authority distributes information on its activities, training programmes and the warehousing sector. Also notable is that circulars and other regulatory decisions of the Authority are not only published on its homepage but also distributed to the Department of Agriculture and Cooperation, all accreditation agencies and all banks including state cooperative banks and the Reserve Bank of India, the central bank.

However, a few key legal elements are missing and their introduction could make warehouse receipts more attractive as collateral for lenders. Warehouse performance guarantees are not addressed in the Act and neither are implementing subsidiary instruments. The Act does not provide for a guarantee or indemnity fund, and it does not require warehouse operators to file a guarantee bond for obtaining registration. Guarantee bonding or indemnity fund requirements can serve a crucial role in protecting receipt holders in the event of warehouse failure or bankruptcy. The Act concentrates on protecting receipt holders and depositors through regulating the warehouses

and a system of quality certification and grading of commodities by the Authority. Likewise, the Act does not prioritize the receipt holder before other creditors in case of execution. Lenders need to have a fairly certain idea of their expected recovery in the event that things go wrong. Without a privileged position for receipt holders, the receipt holder may not be able to recover any losses.

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Indonesia

Introduction to the agricultural sector and legal framework

Agriculture is a critical sector in Indonesia, accounting for approximately 38 percent of total employment and directly contributing 15 percent of GDP, as well as 21 percent of export earnings in 2010.⁶³⁴ The country's primary agricultural products include rice, cassava, peanuts, rubber, cocoa, coffee, palm oil, poultry, beef, pork and eggs.⁶³⁵ Indonesia is the world's third largest producer of rice, with an estimated production of 43.5 million tons in the 2012–2013 marketing season.⁶³⁶ Agricultural trade is increasingly important for Indonesia's economy.⁶³⁷ The agricultural sector is comprised of state owned estates called PT Perkebunan Nusantara, large-scale private plantations and smallholder farmers. Smallholder farmers are prevalent and the primary producers of staple crops such as corn, sugar and rice, and vegetables for domestic consumption.⁶³⁸

Current broad challenges for the country include alleviating poverty, implementing economic and financial reforms and decreasing corruption.⁶³⁹ Many of these broad challenges carry over to the agricultural sector, and the government's policy objectives for the agricultural sector include increasing competitiveness, raising the income of rural farmers, achieving self-sufficiency in strategic commodities and diversifying production.⁶⁴⁰ To help advance these goals, in 2006, Indonesia formalized a system for warehouse receipt finance. The introduction and implementation of the formalized warehouse receipt system has been supported by the International Finance Corporation (IFC) through technical assistance. The system aims at helping to address the problem of access to credit in the agricultural sector as farmers and small to medium businesses lacked fixed asset collateral to secure credit.⁶⁴¹

Indonesia's legal system governed under the 1945 Constitution is based on a civil law system combined with customary law and the Roman legal tradition derived from colonial Dutch influence. Commercial law is further supplemented through statutory laws enacted after independence.⁶⁴²

Warehouse receipt legislation

While warehouse receipt financing based on field warehousing arrangements in Indonesia has been practiced for over a century, only after Law No. 9 of 2006 Regarding the Warehouse Receipt System (hereafter "Warehouse Receipt Law") was passed has the Indonesian parliament formalized the warehouse receipt system (*Sistem Resi Gudang*).⁶⁴³ The law builds upon and codifies customary practices for some types of inventory financing⁶⁴⁴ and expressly states in its preamble that the effective functioning of the warehouse receipt system and legal certainty requires a legal basis, which it aims to provide.⁶⁴⁵

The law is implemented under the auspices of the Ministry of Trade through the Commodity Exchange Regulatory Commission⁶⁴⁶ and was amended in 2011.⁶⁴⁷ The Elucidation⁶⁴⁸ accompanying the 2011 amendment legislation notes that there were weaknesses in the development of the warehouse receipt system, and it aimed to accommodate business demands with warehouse receipts.⁶⁴⁹ One problem was the unavailability of a relatively affordable security mechanism in the event that a warehouse manager suffered insolvency or was otherwise unable to perform his or her obligations. The introduction of the insurance institution was intended to address this problem, increase the confidence of the economic actors and enhance the integrity of the system.⁶⁵⁰

⁶³⁴ See OECD, 2012, p. 20.

⁶³⁵ CIA, 2012.

⁶³⁶ FAO, 2013, p. 102.

⁶³⁷ See Cervantes-Godoy & Dewbre, 2010, p. 5.

⁶³⁸ Global Business Guide Indonesia, 2012.

⁶³⁹ CIA, 2012.

⁶⁴⁰ See OECD, 2012, p. 22.

⁶⁴¹ Jakarta Post Business, 2008.

⁶⁴² Tabalujan, 2002.

⁶⁴³ FAO, 2009, p. 53.

⁶⁴⁴ USAID, 2007, p. 50.

⁶⁴⁵ See Preamble, Law No. 9, 2006.

⁶⁴⁶ FAO, 2009, p. 53.

⁶⁴⁷ See Law No. 9, 2011.

⁶⁴⁸ In Indonesia, promulgated legislation is published in the Official Gazette and sometimes accompanied by an Elucidation (Penjelasan).

⁶⁴⁹ See Marseille & Karyadi, 2011.

⁶⁵⁰ See Elucidation to Law No. 9, 2006.

Scope. The Warehouse Receipt Law of 2006 is structured in eight chapters: general provisions; scope; the form and issuance of warehouse receipts; the institutional structure including approval and licensing of warehouses; accounting and reporting; inspections; sanctions; transitional and closing provisions. Any movable goods that can be stored for a period over three months and can be traded can be the subject of a warehouse receipt.⁶⁵¹

Institutional structure. The Warehouse Receipt Law and the 2011 amendment provide for an extensive system of institutions for oversight and regulation. The Ministry of Trade is tasked with implementing the law through the Commodity Exchange Regulatory Commission. Under the Ministry of Trade, a Supervisory Board was created to provide guidance, regulation and supervision of activities related to the warehouse receipt system.⁶⁵² The Supervisory Board is authorized to grant approval to act as issuers of warehouse receipt derivatives to warehouse managers, the Compliance Evaluation Agency and the Central Register, as well as banks, non-bank financial institutions and future traders; carry out technical inspections for the warehouse manager, the Compliance Evaluation Agency, Central Register and futures traders; order examination and investigation of any party suspected to have violated the provisions of the amended Warehouse Receipt Law; appoint another party to carry out certain inspections; carry out any action necessary to prevent community losses as a result of violations; and provide further elucidation on technical matters under the warehouse receipt law.⁶⁵³

The Warehouse Receipt Central Registry (PT KBI Persero) is a business corporation that has been approved by the Supervisory Body to administer warehouse receipts and warehouse receipt derivatives, comprising record, storage, transfer of ownership, imposition of security rights, reporting and providing an information system network.⁶⁵⁴

The Compliance Evaluation Agency performs activities related to assessing or proving that the particular requirements of products, processes, systems and/or personnel are met. These activities are approved by the Supervisory Board.⁶⁵⁵ The Compliance Evaluation Agency issues a certificate of the goods that must contain the number and date of issuance; the identity of the owner; type and amount of the goods; method of how the goods' quality was evaluated; quality level and class of the goods; certificate period of the goods; and the signature of the party authorized to represent the Agency.⁶⁵⁶ The Compliance Evaluation Agency is not responsible for any changes in the quality of goods caused by the negligence of the warehouse manager.⁶⁵⁷

In addition, the law separates duties between the regional and central governments. The Central Government is responsible for formulating national policies of the warehouse receipt system; coordinating among the agricultural, financial, banking and other related sectors to develop the warehouse receipt system; coordinating between the warehouse receipt system and commodity futures trading; developing of commodity standards and information technology; providing facilities for cooperatives, the small- and medium-scale business sector and to farmers in the warehouse receipt system; and fortifying the warehouse receipt system institutions and infrastructure, particularly the finance and commodity auction market sector.⁶⁵⁸ Regional governments are involved in formulating regional policies to accelerate the implementation of the warehouse receipt system; developing superior commodities in the region; fortifying the role of economic players to develop implementation of the warehouse receipt system; and facilitating the development of a commodity auction market.⁶⁵⁹

Licensing and oversight of warehouses.

Warehouse receipts are only issued by a warehouse manager who must obtain a licence

⁶⁵¹ See Art. 1 No. 2 and 5; Art. 6, Law No. 9, 2006.

⁶⁵² Ibid., Art. 20.

⁶⁵³ Ibid., Art. 21.

⁶⁵⁴ Art. 1(13), Law No. 9, 2011.

⁶⁵⁵ Arts. 28 and 1 No. 12, Law No. 9, 2006.

⁶⁵⁶ Art. 4, Law No. 9 2011. Amending Art. 29.

⁶⁵⁷ Art. 30(2), Law No. 9, 2006.

⁶⁵⁸ Art. 5, Law No. 9, 2011. Amending Art. 32.

⁶⁵⁹ Ibid. Art. 6, amending Art. 33.

from the Supervisory Board, while warehouse receipt derivatives can only be issued by banks, financial institutions and futures traders who have been approved by the Supervisory Board.⁶⁶⁰ In order to issue warehouse receipts, the warehouse business must have obtained a licence from the Supervisory Board, which has broad powers to inspect warehouses for compliance.⁶⁶¹ To obtain a licence, warehouses must meet technical requirements for the storage of goods, which are further detailed in the regulations as is the procedure for obtaining approval.⁶⁶²

Contractual rights and obligations of the parties and risk allocation. Upon receipt of goods for storage, warehouse managers make a written management agreement that indicates the identity of the parties, the rights and obligations of the parties, the storage period and a description of the goods.⁶⁶³ Warehouses must meet set technical requirements for the storage of goods.⁶⁶⁴ By agreement, the warehouse manager may commingle fungible goods of equivalent type and quality according to custom or trade practices.⁶⁶⁵ Lastly, the warehouse delivers the stored goods at maturity of the warehouse receipt or upon request of the receipt holder.⁶⁶⁶ Warehouse managers are liable for the loss of or damage to stored goods caused by negligence.⁶⁶⁷

The Warehouse Receipt Insurance Institution. The elucidation accompanying the 2011 amendment legislation was aimed at addressing weaknesses in the warehouse receipt system, such as the unavailability of a relatively affordable security mechanism in the event that a warehouse manager suffered insolvency or was otherwise unable to perform his or her obligations.⁶⁶⁸

To address this, the amended law of 2011 provided for the formation of the Warehouse Receipt Insurance Institution, an independent, transparent and accountable body that reports to the Minister of Trade.⁶⁶⁹ Warehouse managers are required to become members and pay dues to the Insurance Institution, which acts as the guarantor to the warehouse receipt holder and security right holder in the event of warehouse manager default. This addition was intended to increase the confidence of economic actors and enhance the integrity of the system.⁶⁷⁰

The Warehouse Receipt Insurance Institution guarantees the rights and interests of warehouse receipt holders or security right recipients upon failure, default or disability of the warehouse manager in undertaking his duties in storing and handing over the goods.⁶⁷¹ Its tasks include protecting the warehouse receipt holder and/or security right recipient if the warehouse manager suffers any failure, disability and/or insolvency and maintaining the stability and integrity of the warehouse receipt system in accordance with the manager's duties.⁶⁷²

The Insurance Institution formulates and determines policies to maintain the stability and integrity of the warehouse receipt system and settlement policies of warehouse managers who have defaulted on their obligations.⁶⁷³

The Insurance Institution has the authority to determine and collect contributions when a warehouse manager is first registered; determine and collect a security fee on any stored goods; manage the assets and duties of the Security Institution; acquire and assure the data of the stored goods in accordance with data in the warehouse receipt, financial data and reports submitted by the warehouse manager; carry out reconciliation, verification or confirmation of the above data; determine the requirements, procedures and provisions for claiming payment; and appoint, authorize or assign other parties to act on the Insurance Institution's behalf.⁶⁷⁴

⁶⁶⁰ Art. 2(1) and (2) Law No. 9, 2006.

⁶⁶¹ Ibid., Arts. 2 (1), 26 and 38.

⁶⁶² Ibid., Art. 22.

⁶⁶³ Ibid., Art. 24.

⁶⁶⁴ Ibid., Art. 22.

⁶⁶⁵ Ibid., Art. 25.

⁶⁶⁶ Ibid., Art. 17.

⁶⁶⁷ Ibid., Art. 27.

⁶⁶⁸ See Marseille & Karyadi, 2011.

⁶⁶⁹ Art. 7, Law No. 9, 2011, inserting Art. 37A.

⁶⁷⁰ See Elucidation to Law No. 9, 2006.

⁶⁷¹ Art. 1(14), Law No. 9, 2011.

⁶⁷² Ibid., Art. 7, inserting Art. 37D.

⁶⁷³ Ibid., inserting Art. 37E.

⁶⁷⁴ Ibid., inserting Art. 37F.

The Insurance Institution may also request any information or data necessary to carry out its duties.⁶⁷⁵

Warehouse receipts. Law No. 9 of 2006 on the Warehouse Receipt System (as amended by Law No. 9 of 2011) defines a warehouse receipt as documentary evidence of the ownership of goods stored in a warehouse, issued by a warehouse manager.⁶⁷⁶ The Warehouse Receipt Law details the minimum requirements for warehouse receipts. Warehouse receipts shall include

- the title of the warehouse receipt;
- type of the warehouse receipt;
- the name and address of the goods' owner;
- location of the warehouse;
- date of issuance;
- issuance number;
- maturity date of the stored goods;
- a description of the goods;
- the cost of storage;
- the signature of the owner of the stored goods and of the warehouse manager.⁶⁷⁷

A warehouse receipt derivative can take the form of a warehouse receipt futures contract, option, index, discounted financial instrument or any other warehouse receipt derivative used as a financial instrument.⁶⁷⁸ Warehouse receipts and warehouse receipt derivatives may be issued in paper or electronic form.⁶⁷⁹ Warehouse receipts can only be issued by a warehouse manager licenced by the Supervisory Board, and warehouse receipt derivatives can only be issued by banks, financial institutions and futures traders that have been approved by the Supervisory Board.⁶⁸⁰ Along with the receipt, warehouse managers must enter into a written management agreement with depositors that includes the identity of the parties, the rights and obligations of the parties, the storage period and a

description of the goods.⁶⁸¹ The 2011 amendment eliminated the original provision that required the value of the goods be based on the market value of the goods at the time of storage.⁶⁸²

To maintain transparency, warehouse managers, registration centres and the Compliance Evaluation Agency must create and maintain records of activities relating to the warehouse receipt system and periodically submit reports to the Supervisory Board.⁶⁸³

Warehouse receipt right guarantee. The warehouse receipt Guarantee of Rights Agreement is required to accompany the principal agreement.⁶⁸⁴ The elucidation to the legislation explains that this agreement is intended to accommodate warehouse receipt holders' needs for the availability of funds through security institutions without having to change the existing legal warranty mechanisms. Therefore, the law created a separate legal guarantee – called the warehouse receipt right guarantee – in pre-existing external security institutions to provide legal certainty to the parties involved.⁶⁸⁵

The Guarantee of Rights Agreement includes the identity of the parties, the agreement of the guaranteed rights, specification of the collateral warehouse receipt, value of the loan guarantee and market value of the goods at the time of their deposit in the warehouse.⁶⁸⁶ The Guarantee of Rights Agreement contains information on the underlying principal agreement, which facilitates the work of the registration centres and warehouse managers, prevents double insurance and provides legal certainty about who is entitled to the goods.⁶⁸⁷ Imposition of the guarantee of rights of the warehouse receipt is made by the deed of covenant assurance.⁶⁸⁸

Transfer of warehouse receipts. Warehouse receipts may be transferred, pledged as collateral

⁶⁷⁵ Ibid., inserting Art. 37G.

⁶⁷⁶ See Art. 1 No. 2, Law No. 9, 2006.

⁶⁷⁷ Art. 5, Law No. 9, 2011.

⁶⁷⁸ Ibid., Art. 1(3).

⁶⁷⁹ Art. 2, Law No. 9, 2006.

⁶⁸⁰ Ibid., Art. 2(1) and (2).

⁶⁸¹ Ibid., Art. 24.

⁶⁸² See Marseille & Karyadi, 2011.

⁶⁸³ Art. 36, Law No. 9, 2006.

⁶⁸⁴ Ibid., Art. 12.

⁶⁸⁵ Art. 12, Elucidation to Law No. 9, 2006.

⁶⁸⁶ Art. 14(2), Law No. 9, 2006.

⁶⁸⁷ Art. 13, Elucidation to Law No. 9, 2006.

⁶⁸⁸ Art. 14, Law No. 9, 2006.

for loans or used as a delivery of commodities document.⁶⁸⁹ They are not transferable after they are due.⁶⁹⁰ The transfer of a warehouse receipt on behalf of a person is performed by authentic deed, and the transfer of a warehouse receipt drawn to order is performed by endorsement with physical delivery of the warehouse receipt.⁶⁹¹ Warehouse receipts and derivatives can be traded on exchanges or over the counter according to the rules of the exchange.⁶⁹²

Any transfer must be reported to the Central Register.⁶⁹³ Transactions of warehouse receipts and warehouse receipt derivatives – including initial recordings, transfer and security rights – are tracked by the centralized registration centre.⁶⁹⁴ The transferee of a warehouse receipt receives the same rights to documents and goods as the previous owner.⁶⁹⁵ The transferor of the warehouse receipt warrants that he has the right to transfer the receipt, the assignee is not deemed to have knowledge of any facts that can interfere with the validity of the warehouse receipt and the transfer process has been performed in accordance with the law. Thereafter, the assignee is released from liability for any errors in previous transfers of the warehouse receipt.⁶⁹⁶

Settlement and release of stored goods. The warehouse manager must deliver the goods upon maturation of the warehouse receipt or at the request of the warehouse receipt holder and follow any additional regulations issued by the government. The warehouse manager must deliver the goods to the last receipt holder.⁶⁹⁷

Execution and priority of obligation. In the event of default by the debtor, the creditor may claim and sell the underlying warehouse goods through public auction or direct sale after at least three days of notice without a court order.

Storage and sales fees must be satisfied before satisfaction of the debt.⁶⁹⁸

Offences and penalties. The law defines offences and corresponding sanctions. Anyone who manipulates data or information relating to warehouse receipt derivatives and warehouse receipts is subject to imprisonment or a monetary fine.⁶⁹⁹ Likewise, anyone who refuses to provide data, information or documents requested by the Security Institution faces imprisonment and a fine.⁷⁰⁰ Anyone conducting the business of warehousing without approval is also subject to imprisonment and a fine.⁷⁰¹

The Supervisory Board is authorized to impose administrative sanctions on violations of the Warehouse Receipt Law and its implementing regulation. Administrative sanctions can include a written warning; administrative fine; limitation of business activities; replacement order for damaged and/or lost goods; termination of business activities; and cancellation of warehouse approval.⁷⁰² The Security Institution is responsible for imposing the administrative sanction on the warehouse manager.⁷⁰³ In the event of an alleged violation of legislation on warehouse receipts, the Supervisory Board will examine it.⁷⁰⁴ A civil servant on the Supervisory Board is authorized as a special investigator under Law No. 8 of 1981 on criminal proceedings to conduct an investigation of violations of the warehouse receipt legislation.⁷⁰⁵

Additionally, the amendment introduced the administrative sanction of requiring that lost and/or damaged goods be replaced by goods of the same quality and amount as stated on the warehouse receipt.

Conclusion

Indonesia seems to have suitable country conditions for a successful warehouse receipt

⁶⁸⁹ Ibid., Art. 4.

⁶⁹⁰ Ibid., Art. 8(4).

⁶⁹¹ Ibid., Art. 8 (1) and (2).

⁶⁹² Ibid., Art. 9.

⁶⁹³ Ibid., Art. 8(3).

⁶⁹⁴ See *ibid.*, Art. 2(5).

⁶⁹⁵ See *ibid.*, Art. 10.

⁶⁹⁶ Ibid.

⁶⁹⁷ Ibid., Arts. 17, 18.

⁶⁹⁸ See *ibid.*, Art. 16 (1) and (2).

⁶⁹⁹ Ibid., Art. 42.

⁷⁰⁰ Art. 10, Law No. 9, 2011. Inserting Art. 42A.

⁷⁰¹ Art. 43, Law No. 9, 2006.

⁷⁰² Art. 8, Law No. 9, 2011. Amending Art. 40.

⁷⁰³ Ibid., Art. 9, inserting Art. 40A.

⁷⁰⁴ Art. 38, Law No. 9, 2006.

⁷⁰⁵ Ibid., Art. 39.

finance system with broad use. Its agricultural sector produces considerable volumes of commodities that are suitable for long-term storage – rice, maize, cocoa and coffee – and consequently for warehouse receipts. In addition, Indonesia is moving towards a free market economy, with its government undertaking reform efforts and generally supporting the modernization and development of the country's commodity infrastructure.⁷⁰⁶

A warehouse receipt system has been practiced for over a century, and the first warehouse receipt law approved in 2006 built on and codified these customary practices. Since then, it has been observed that Indonesia's warehouse receipt system is rapidly gaining popularity.⁷⁰⁷ This success is supported by a comprehensive legal framework. The specific warehouse receipt law addresses all core elements of warehousing and warehouse receipts. One particularly noteworthy factor is the strong protection of lenders through the creation of the Insurance Institution and the provision of swift out-of-court enforcement, with three days of notice in case of debtor default.

Furthermore, the law sets up a comprehensive and competent institutional oversight structure. It clearly defines the standard obligations of warehouse managers. Warehouse receipts may be issued in paper or electronic form and must be registered with a centralized registration centre, which strengthens the transparency of the system. Detailed provisions regulate the transfer of warehouse receipts. In case of debtor default, creditors are allowed to claim and sell the underlying goods without a court order after three days of notice to the warehouse.

Additional guarantees for warehouse performance were introduced by an amendment of the core law in 2011. In particular, the amendment created the Insurance Institution to address business concerns about the unavailability of a relatively affordable security mechanism in case of the warehouse manager's insolvency or other inability to perform his or her obligations. Warehouse managers are required

Box 12: At a glance – Indonesia's warehouse receipts legislation

Key legislation: Law No. 9 of 2006 Regarding Warehouse Receipt System (as amended).

Scope: Any movable goods that can be stored for a period over three months and can be traded.

Institutional structure: Under the Ministry of Trade, a Supervisory Board was created to guide, regulate and supervise activities of the warehouse receipt system.

Authorization and oversight of warehouses: To issue warehouse receipts, the warehouse business must obtain a licence from the Supervisory Board, which is given broad powers to inspect warehouses for compliance.

Guarantees: Warehouse managers are required to become members of the Insurance Institution and pay dues. The Insurance Institution acts as the guarantor to the warehouse receipt holder and security right holder in the event of warehouse manager default.

Contractual rights and obligations of the parties and risk allocation: Upon receipt of goods for storage, warehouse managers make a written management agreement that indicates the identity of the parties, the rights and obligations of the parties, the storage period and a description of the goods.

Warehouse receipts: Indonesia provides for paper and electronic single warehouse receipts and warehouse receipt derivatives in the form of warehouse receipt futures contracts, options, indexes, discounted financial instruments or any other warehouse receipt derivative used as a financial instrument.

Transferability of warehouse receipts: The transfer of a warehouse receipt on behalf of a person is performed by authentic deed, and the transfer of a warehouse receipt drawn to order is performed by endorsement with its physical delivery. Transactions of warehouse receipts and warehouse receipt derivatives, including initial recording, transfer and security rights, are tracked by centralized registration.

Settlement and release of stored goods: The warehouse manager must deliver the goods upon maturation of the warehouse receipt or at the request of the warehouse receipt holder.

Execution and priority of obligations: In the event of default by the debtor, the creditor may claim and sell the underlying warehouse goods through public auction or direct sale after at least three days of notice without a court order.

Offenses and penalties: Indonesia provides for administrative penalties, fines and imprisonment for violations of warehouse rules and rules related to warehouse receipts.

⁷⁰⁶ See FAO, 2009, p. 52.

⁷⁰⁷ USAID, 2007, p. 50.

to become members of the Insurance Institution and pay dues, and the Insurance Institution acts as the guarantor to the warehouse receipt holder and security right holder in the event of warehouse manager default. This addition was intended to increase the confidence of the economic actors and enhance the integrity of the system.⁷⁰⁸

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⁷⁰⁸ See Elucidation to Law No. 9, 2006.

Kazakhstan

Introduction to the agricultural sector and legal framework

Today, Kazakhstan is a major global exporter of grain and is among the top ten exporters of wheat.⁷⁰⁹ However, like several other Eastern European and Central Asian countries, agricultural output in Kazakhstan declined markedly after the breakup of the Soviet Union, and the agricultural sector has experienced wide year-to-year variability in rates of growth.⁷¹⁰ During this time, many aspects of the agricultural sector underwent large shifts. For example, as a result of land reforms, the number of farms in Kazakhstan increased from 5 000 in 1990 to 188 616 in 2012, with a corresponding decrease in average farm size.⁷¹¹ During the 1990s, total agricultural output decreased by more than half, but more consistent growth returned during the 2000s due in part to institutional and legal changes implemented in the agricultural sector at the beginning of the decade.⁷¹²

Thus, in 2001, with a particular focus on Kazakhstan's most important sector (grain), Kazakhstan promulgated an extensive law, hereinafter referred to as the Law on Grain. The objectives of this law include improving national food security and expanding and strengthening grain markets and grain production.⁷¹³ The Law on Grain includes 42 articles broken down into nine chapters, including general provisions; public administration; government support to the production and sale of grain; public grain resources; grain warehouses; regulation of warehouses; liquidation of warehouses; grain warehouse receipts; and final provisions.

Although there was a form of general warehouse receipts in Kazakhstan, the inclusion of a specific framework for grain warehouse receipts (with the assistance of the European Bank for Reconstruction and Development [EBRD]) proved to be a positive step for the grain sector.⁷¹⁴

Banks did lend on warehouse receipts prior to the Law on Grain, but banks reported many instances where warehouses were found empty, preventing recovery under the receipts.⁷¹⁵ In response to these challenges, EBRD provided assistance to Kazakhstan during the conceptualization and legislative drafting stages and also helped to mobilize and provide credit to launch the system.⁷¹⁶

Kazakhstan is now widely regarded as having a well-developed and effective system for grain warehouse receipts, supported by a complete legal framework. "They have been able to build initial consensus among key stakeholders, institutionalize all the important elements of a warehouse receipt system, and involve the financial sector in utilization of the system," so that grain warehouse receipts have become an important part of agricultural credit in Kazakhstan.⁷¹⁷ In 2010, over 30 percent of all loans in agriculture were based on grain warehouse receipts, and it is estimated that billions (USD) are now being lent by international and local banks every year.⁷¹⁸ The legal framework for grain warehouse receipts under the Law on Grain has several elements included to make receipts attractive collateral for lenders, such as out-of court enforcement and a guarantee fund.⁷¹⁹

Kazakhstan's legal system derives from the European civil law tradition and has Soviet and Islamic legal tradition overlays.⁷²⁰ The Civil Code takes a superior position in the legal hierarchy over specific legislation in governing most "commodity-money relations and other property relations," which would normally include grain warehouse receipts.⁷²¹ Notably, the 1994 Civil Code of the Republic of Kazakhstan (as amended) also contains detailed provisions governing general obligations for storage, warehouses and the issuance and circulation of warehouse receipts.⁷²² However, a special exception was

⁷⁰⁹ OECD, 2013, p. 19.

⁷¹⁰ See *ibid.*, p. 20.

⁷¹¹ See *ibid.*, p. 18.

⁷¹² See *ibid.*, pp. 16, 20.

⁷¹³ Art. 3, Law on Grain.

⁷¹⁴ See e.g. OECD, 2013, p. 145; see also, Zhazykbayeva, 2012.

⁷¹⁵ See FAO, 2009, p. 38.

⁷¹⁶ See Bryde, 2004, p. 3.

⁷¹⁷ See FAO, 2009, p. 10.

⁷¹⁸ See *ibid.*, p. 37; see also, OECD, 2013, p. 145.

⁷¹⁹ See FAO, 2009, p. 38.

⁷²⁰ See Stalbovskiy, Stalbovskaya & Nurakhmet, 2013.

⁷²¹ See Art. 1(1), Civil Code.

⁷²² *Ibid.*, Arts. 768-83; Arts. 791-96; Arts. 797-802, respectively.

included in the Civil Code so that specific legislation on banking and grain (including grain warehouse receipts) could take precedence over the provisions of the Code in cases of contradiction.⁷²³

Warehouse receipt legislation

The legal framework for warehouse receipts in Kazakhstan is made up of general provisions for warehouse receipts in the Civil Code, and special legislation for grain that establishes a specific regulatory system for grain warehouse receipts (the Law on Grain).

Scope. The Law on Grain is limited in scope by the definition of grain: the fruits of cereal, legume and oilseed crops used for food, seed, feed or industrial purposes.⁷²⁴ It is important to note that the broader provisions for warehouse receipts contained in the Civil Code contain no such limitations on scope.⁷²⁵ Therefore, within the legal system of Kazakhstan, it is possible to issue warehouse receipts for commodities other than grain.⁷²⁶ While the regime for grain warehouse receipts has been very successful under the specific legislation, their use for credit has not expanded as much for other commodities because of the lack of certain key components in the broader Civil Code provisions (inspection of warehouses, performance guarantees). Accordingly, the primary focus of this study is on the Law on Grain, while making reference to analogous provisions (or lack thereof) in the broader framework of the Civil Code.⁷²⁷

The 2001 Law on Grain covers state regulation of and involvement in many aspects of the grain production cycle, from primary production to storage and transport. It outlines nine primary areas related to the grain sector that the Government of Kazakhstan regulates: licensing grain warehouses according to government regulations; certifying grain quality; accrediting laboratories for grain testing; regulating the system for grain warehouse receipts; monitoring

grain warehouses for compliance with rules; maintaining state grain resources for food security and market stability; subsidizing the cost of seeds; funding measures for plant protection and quarantine; and subsidizing the cost of fertilizers and fuels for agricultural production.⁷²⁸ Note also that this study only focuses on aspects related to warehouse regulation and grain warehouse receipts; the sections of the Law on Grain that cover subsidies, control or state grain resources are not further discussed in this study.

Institutional structure. In Kazakhstan, the primary oversight institution for grain warehouses and receipts is the Ministry of Agriculture.⁷²⁹ Within the ministry, the Law on Grain created a central State Grain Inspector⁷³⁰ that delegates responsibilities to local executive authorities, who inspect grain warehouse facilities to check compliance with applicable regulations.⁷³¹ Local inspectors are responsible for ensuring state control of grain quality, collecting information necessary for state control and monitoring of the grain market, monitoring compliance by warehouses with applicable regulations, drawing up protocols for administrative violations and proposing fines or suspensions for non-compliance.⁷³² While warehouses must grant access to inspectors, they are explicitly bound to confidentiality and compliance with laws on trade secrets.⁷³³

Licensing and oversight of warehouses.

Kazakhstan currently only requires licensing for grain warehouses.⁷³⁴ Its approach to their oversight focuses on three themes: dissemination of the binding regulations on warehouse operations; inspections of warehouses for compliance; and the imposition of penalties on warehouses and their officers for non-compliance.⁷³⁵ Under the Law on Grain, all grain warehouses must be licenced and be

⁷²³ See *ibid.*, Art. 3(3).

⁷²⁴ Art. 1(8), Law on Grain.

⁷²⁵ Arts. 797-802, Civil Code.

⁷²⁶ See *ibid.*, Art. 797.

⁷²⁷ For a detailed discussion on the relationship between the Law on Grain and the Civil Code, see Zhazykbayeva, 2012.

⁷²⁸ Art. 4, Law on Grain.

⁷²⁹ See *ibid.*, Arts. 1(26) and 6.

⁷³⁰ *Ibid.*, Art. 24-1.

⁷³¹ See *ibid.*, Arts. 24 and 24-1. See also, Sec. 1(2), Regulations on approval of rules for licensing, 2007.

⁷³² Art. 24, Law on Grain.

⁷³³ See *ibid.*, Art. 24(3) and (4).

⁷³⁴ See *ibid.*, Art. 13(2). See also, Arts. 4(3) and 25(2), Law on licensing, 2007.

⁷³⁵ See Art. 17, Law on Grain.

public warehouses open for general use under public-form storage contracts.⁷³⁶ As of 2010, there were 222 licenced grain warehouses in Kazakhstan.⁷³⁷ Without being licenced, no entity may store grain as its primary activity, nor use any title suggesting this service.⁷³⁸ Licenced grain warehouses cannot conduct other activities unrelated to the storage of grain, except for producing and selling grain mill products (e.g. animal feed, bread and pasta) or providing storage services for fuel.⁷³⁹

Grain warehouses must be inspected by local executive authorities upon application for a licence, and annually thereafter.⁷⁴⁰ The local authorities must maintain a publicly accessible list of all licenced grain warehouses.⁷⁴¹ When inspecting a grain warehouse, the inspector checks for compliance with the following licensing requirements: the ownership of the grain warehouse; access control, weighing equipment and storage facilities; serviceable handling equipment and ventilation systems; functioning grain-cleaning machines and dryers (if provided as part of a service); serviceable processing equipment; functioning and calibrated measurement equipment; proof of compliance with environmental protection requirements; and staff specialists with an appropriate technological education.⁷⁴²

Additionally, the Law on Grain outlines several specific obligations of grain warehouse keepers after accepting grain for storage. Grain warehouses must comply with requirements for licensing and the procedures for storage, sampling and quality and quantity assurance.⁷⁴³ Detailed regulations outline strict procedures for accounting, record-keeping and receipts.⁷⁴⁴ Warehouses are obliged to submit to the designated government authority a card with

the names of the persons authorized to sign grain warehouse receipts, as well as samples of their signatures.⁷⁴⁵ Warehouse keepers must maintain separate accounting operations for the permitted auxiliary services,⁷⁴⁶ so as to maintain the transparency of operations related to grain storage.⁷⁴⁷ Furthermore, grain warehouses must conduct annual audits according to prescribed requirements and publish the results in public media.⁷⁴⁸ Grain warehouses must keep an in-house paper registry recording all paper receipts issued and if issuing electronic receipts, must update the central state electronic registry.⁷⁴⁹

Warehouses have two options regarding mandatory insurance requirements for grain stored in the warehouse and covered by warehouse receipts. The first option is that warehouses can become members of an established guarantee fund that guarantees the fulfilment of obligations under grain warehouse receipts.⁷⁵⁰ The second option is to take out private insurance to insure the fulfilment of obligations.⁷⁵¹ Evidence shows that, while initially popular, warehouses have recently largely abandoned the guarantee fund in favour of insurance. Insurance is viewed as cheaper, but it also might, in some cases, provide lower levels of compensation to receipt holders than the guarantee fund would.⁷⁵²

Performance guarantees. Grain warehouses that issue grain warehouse receipts must either participate in the established guarantee fund or else take out private civil insurance to guarantee the performance of obligations under grain warehouse receipts.⁷⁵³ No such guarantees exist for other commodities. The state initially established the guarantee fund as a non-profit entity with a capital infusion of USD 15 million, to be augmented by entry and annual dues

⁷³⁶ Ibid., Art. 13(1) and (2).

⁷³⁷ OECD, 2013, p. 145.

⁷³⁸ Art. 13(3), Law on Grain.

⁷³⁹ Ibid., Art. 19(1).

⁷⁴⁰ Sec. 4(19), Regulations on approval of rules for licensing, 2007.

⁷⁴¹ Ibid., Sec. 4(21).

⁷⁴² See *ibid.*, Qualifications Appendix.

⁷⁴³ Art. 14, Law on Grain.

⁷⁴⁴ See *ibid.*, Arts. 21 and 23. See also, Regulations on grain storage, 2011.

⁷⁴⁵ Art. 39(8), Law on Grain.

⁷⁴⁶ Ibid., Art. 19(1).

⁷⁴⁷ Zhazykbayeva, 2012, p. 3.

⁷⁴⁸ See Arts. 20 and 22, Law on Grain.

⁷⁴⁹ See Art. 6, Regulations on approval of the rules of issuance, circulation and redemption of grain receipts, 2011; Art. 7, Regulations on using electronic grain receipts, 2012.

⁷⁵⁰ Art. 16(1), Law on Grain.

⁷⁵¹ Ibid., Art. 16(2).

⁷⁵² Zhazykbayeva, 2012, p. 6.

⁷⁵³ Art. 16, Law on Grain.

from members.⁷⁵⁴ The established guarantee fund guarantees a minimum of 80 percent of the value of grain warehouse receipts issued by participating warehouses, based on set prices for qualities of grain.⁷⁵⁵

To file a claim for compensation, an applicant must submit copies of the warehouse receipt and confirmation from the local inspector that the warehouse failed to produce the grain covered by the receipt.⁷⁵⁶ Claims must be decided upon within 30 days, and in the event that the fund decides to satisfy the requirements of the grain receipts holder, the pay-out will be transferred within another ten days.⁷⁵⁷ Claims are not paid in cases where the warehouse is exonerated from fault for the loss, due to *force majeure*, gross negligence or fault of the stored grain's owner.⁷⁵⁸

Contractual rights and obligations of the parties and risk allocation. General obligations for storage and warehouse keepers are contained in the Civil Code. A warehouse must keep the stored goods and return them in the same condition, minus any natural losses or deterioration.⁷⁵⁹ Grain warehouses are paid according to the terms of each storage contract.⁷⁶⁰ Note that explicit reference is made to monopoly laws: the government sets the storage price when a grain warehouse enjoys a dominant position in the market.⁷⁶¹

Under the Civil Code, commercial warehouse keepers are exempt from liability for damage or loss only in cases where the loss or damage was caused by *force majeure*, the properties of the goods stored or the intent or gross negligence of the depositor.⁷⁶²

Warehouse receipts. When a grain owner drops off grain for storage, the warehouse keeper issues a receipt to acknowledge storage.⁷⁶³

This receipt is classified as a security under the laws of Kazakhstan.⁷⁶⁴ Receipts can be in prescribed paper form or electronic form. In 2012, Kazakhstan promulgated regulations allowing for the creation of a system for electronic warehouse receipts, to allow for easier issuance and transfer.⁷⁶⁵ Whereas paper receipts are not centrally registered outside of the issuing warehouse, electronic receipts are registered in the centralized state register of electronic grain receipts.⁷⁶⁶

The grain owner can request that receipts be issued for fractions of the delivered grain, but receipts can only be issued for and represent batches of uniform quality.⁷⁶⁷ Once issued, new duplicate receipts are only issued when the receipt has physically deteriorated, it is lost or it lacks free space to make further endorsements.⁷⁶⁸ Each issuance or reissuance is recorded in the warehouse's chronological register.⁷⁶⁹

In the broad framework, the Civil Code allows for both simple and double warehouse receipts, while stating that special legislation may require the use of one or both types for a particular sector.⁷⁷⁰ Kazakhstan exclusively provides for two-part grain warehouse receipts, consisting of the matching warehouse certificate and pledge certificate.⁷⁷¹ Each part of the receipt must contain the following information:

- a government-assigned identification code;
- the serial number from the receipt register of the warehouse;
- the name, address and tax registration number of the warehouse;
- the current number of grain receipts in the warehouse register;

⁷⁵⁴ Zhazykbayeva, 2012. p. 5.

⁷⁵⁵ See Arts. 4 and 16(2), Regulations on guarantee fund, 2004.

⁷⁵⁶ Ibid., Art. 6.

⁷⁵⁷ Ibid., Arts. 8 and 13.

⁷⁵⁸ Ibid., Art. 10.

⁷⁵⁹ Art. 775, Civil Code.

⁷⁶⁰ Art. 15, Law on Grain.

⁷⁶¹ See *ibid.*, Arts. 18 and 19(2).

⁷⁶² Art. 779(1), Civil Code.

⁷⁶³ Art. 39(1), Law on Grain.

⁷⁶⁴ See Art. 797(2), Civil Code.

⁷⁶⁵ Regulations on using electronic grain receipts, 2012.

⁷⁶⁶ See Art. 6, Regulations on approval of the rules of issuance, circulation and redemption of grain receipts, 2011; Art. 2(8), Regulations on using electronic grain receipts, 2012.

⁷⁶⁷ Art. 39-1(1), Law on Grain.

⁷⁶⁸ Ibid., Art. 39-1(3).

⁷⁶⁹ Ibid., Art. 39-1(2).

⁷⁷⁰ Art. 797(1), Civil Code.

⁷⁷¹ Art. 39(2), Law on Grain.

- the name, address and tax identification number of the grain owner (depositor);
- the type of grain, including its quantitative and qualitative characteristics;
- the storage period, if defined;
- method of payment for storage services;
- issue date;
- the signature and seal of the authorized person of the warehouse.⁷⁷²

Transfer of warehouse receipts. The two parts of the warehouse receipt – the warehouse certificate and pledge certificate – can be circulated together or separately.⁷⁷³ The parts of the paper warehouse receipt are transferred by making endorsements that meet several content requirements.⁷⁷⁴ When separating the pledge certificate from the warehouse certificate (such as when pledging collateral for a loan), the warehouse certificate must be marked with the name and address of the transferee, the content of the obligation secured by collateral, its size, the interest rate on it, the signature of the transferee and the date of separation of the pledge certificate from the warehouse certificate.⁷⁷⁵ The pledge certificate must have similar annotations except that information about the transferee should be replaced with information about the transferor.⁷⁷⁶

Within ten days of an endorsement, the transferee of a warehouse receipt must provide notice to the warehouse that issued the receipt.⁷⁷⁷ For electronic receipts, endorsements and pledging receipts as collateral require similar information but must be done through the online forms on the state grain warehouse receipt register website.⁷⁷⁸

Settlement and release of stored goods.

When the pledge certificate and the warehouse certificate are submitted, the warehouse manager releases the corresponding amount of covered grain.⁷⁷⁹ The holder of both parts of the grain warehouse receipt has full rights to settlement and release of the stored goods it covers. But, in cases where the two parts have been separated, the warehouse certificate holder has the right to transfer it and to dispose of the grain (only if any loan secured by pledging the pledge certificate is first repaid). On the other hand, the pledge certificate holder is entitled to transfer it and to require the repayment of the loan plus interest that is secured by the pledge certificate.⁷⁸⁰ When a debtor pays the full amount of the loan plus interest before it expires, then the lender must make another endorsement on the pledge certificate to return it to the holder of the warehouse certificate.⁷⁸¹

Grain warehouses are paid according to the terms of each storage contract. If needed and with consent of the holder of applicable warehouse receipts, warehouse managers have the right to recover due storage costs by withholding and auctioning an equivalent portion of the stored grain.⁷⁸²

Execution and priority of obligation. In the case of failure to repay the loan for which the receipt was pledged, the holder of the pledge certificate is entitled to foreclose on the underlying grain.⁷⁸³ The Law on Grain provides for an out-of-court procedure whereby a lender can recover on a defaulted loan based on a grain warehouse receipt.⁷⁸⁴ For electronic receipts, the creditor fills out an online form and provides documentation in support of an application for change in ownership of the grain receipt.⁷⁸⁵ This out-of-court procedure requires evidence of default to the warehouse. Then, notice of

⁷⁷² Ibid., Art. 39(3).

⁷⁷³ Ibid., Art. 39(2).

⁷⁷⁴ See *ibid.*, Art. 40-1.

⁷⁷⁵ Ibid., Art. 39(5).

⁷⁷⁶ Ibid., Art. 39(6).

⁷⁷⁷ Art. 12, Regulations on approval of the rules of issuance, circulation and redemption of grain receipts, 2011.

⁷⁷⁸ See generally, Regulations on using electronic grain receipts, 2012.

⁷⁷⁹ Art. 41, Law on Grain.

⁷⁸⁰ Ibid., Art. 40(1)-(3).

⁷⁸¹ Ibid., Art. 41-1(1). See also, Art. 23, Regulations on approval of the rules of issuance, circulation and redemption of grain receipts, 2011.

⁷⁸² Art. 15, Law on Grain.

⁷⁸³ Ibid., Art. 41-1(2).

⁷⁸⁴ Ibid., Art. 41-2.

⁷⁸⁵ See Art. 30, Regulations on using electronic grain receipts, 2012.

loan default must be provided to the public and the holder of the warehouse certificate, and after a 14-day delay, the underlying grain may be auctioned off to the highest bidder. The auction proceeds are used to satisfy the debtor's obligations according to the following priority order: the costs associated with the auction; warehouse storage fees; and the loan amount due to the holder of the pledge certificate. The remaining amount from the auction proceeds goes to the holder of the warehouse certificate.⁷⁸⁶

Additionally, if a grain warehouse is liquidated, holders of grain warehouse receipts enjoy a relatively privileged ranking for recovery from the liquidation proceeds. The order for satisfaction in cases of liquidation is claims of persons to whom the liquidated warehouse is responsible for damage to life or health; wage claims of persons working under an employment contract for the warehouse; claims of holders of pledged grain warehouse receipts; claims of holders of unpledged warehouse receipts; claims of creditors for obligations secured by a pledge of property of the warehouse; government tax liabilities; and lastly, other creditor claims.⁷⁸⁷

Offences and penalties. The Law on Grain outlines in explicit detail several layers of penalties for violations of the rules governing warehouses and the issuance of grain warehouse receipts.⁷⁸⁸ Penalties include fines on the warehouse, the suspension or revocation of a warehouse licence, placing the warehouse under temporary forced administration, liquidating the warehouse (proceeds to be collected towards the state budget) and fines on individual officers of the warehouse in accordance with the laws of Kazakhstan.⁷⁸⁹

Six prescribed violations lead to the suspension of a warehouse licence for six months (or until the violations are corrected): failure to adhere to requirements related to grain warehouse receipts; violation of grain phytosanitary rules;

violation of general regulations under the Law on Grain; implementation of activities that are prohibited for grain warehouses; systematic problems with quality and quantity determinations; and failure to comply with auditing requirements.⁷⁹⁰ A licence may be revoked if it is found that the warehouse violated initial licensing requirements, provided false information on the licence application or violated other provisions as outlined in the list above for suspension.⁷⁹¹ If there are egregious failures – namely the systematic failure to perform contractual obligations for the storage of grain or issuing receipts in excess of the actual amount of grain taken in – the warehouse may be put under external temporary management.⁷⁹² The final possible stage after egregious violations is liquidation of the grain warehouse.⁷⁹³

Conclusion

Kazakhstan is widely regarded as having a successful grain warehouse receipt system. It is among the most advanced in the Eastern Europe and Central Asia (ECA) region. Billions of dollars in credit are provided annually based on grain warehouse receipts, and several private banks are involved.⁷⁹⁴

The system for grain warehouse receipts is based on a strong legal framework that formalizes its elements. It establishes a strong institutional framework, including an elaborate licensing and oversight system under the Ministry of Agriculture. This ensures warehouse integrity and minimizes the risks of investing in warehouse operations for lenders, increasing confidence in the system. This is complemented by a graduated system of penalties that – besides the standard possibilities of imprisonment, fines, suspension and revocation of licences – provides for a warehouse to be placed under temporary external administration or to be liquidated.

Further, two notable elements protect the lenders' interests, which do not commonly

⁷⁸⁶ Art. 41-2, Law on Grain.

⁷⁸⁷ Ibid., Art. 38(3).

⁷⁸⁸ See *ibid.*, Arts. 25-33.

⁷⁸⁹ See *ibid.*, Art. 25.

⁷⁹⁰ See *ibid.*, Art. 26.

⁷⁹¹ Ibid., Art. 27.

⁷⁹² See *ibid.*, Arts. 28-33.

⁷⁹³ See *ibid.*, Art. 35(2).

⁷⁹⁴ See FAO, 2009, p. 37.

feature among warehouse legislation in most countries: an indemnity fund and out-of-court procedures in case of loan default. First, the Law on Grain aims to guarantee warehouse performance by requiring warehouses to either obtain private insurance or participate in a guarantee fund that ensures the fulfilment of their grain warehouse receipt obligations. By protecting the depositor and lender in the case of warehouse default, the confidence in the warehouse receipt system is strengthened and creditors are reassured.

Second, and very importantly, the law ensures easy enforceability of the security through an out-of-court procedure in the case of the debtor's failure to repay the loan. The lender can enforce his or her rights without the need to initiate often time-consuming and cumbersome court procedures. Grain may be auctioned off just 14 days after the lender has provided evidence of loan default to the warehouse and notified the public and the warehouse certificate holder. The holder of the pledge certificate then receives the residual loan amount following the satisfaction of auction and warehouse storage costs. Likewise, in case of warehouse liquidation, holders of grain warehouse receipts enjoy a privileged ranking after the wage claims of warehouse employees but before other creditors.

Three aspects are seen as the key features that have contributed to the success of Kazakhstan's system. First, it has been observed that lenders have grown to trust the grain warehouse receipt system in Kazakhstan, due in no small part to the contributions of an efficient and well-designed regulatory authority in the Ministry of Agriculture.⁷⁹⁵ Second, the volume of loans increased after the streamlined out-of-court enforcement was introduced. Lastly, the system benefited from the introduction of the performance guarantee fund with wide buy-in.⁷⁹⁶ However, as it has been noted, recently warehouses have begun to abandon the fund in favour of private insurance,⁷⁹⁷ and further regulatory development might be necessary to

Box 13: At a glance – Kazakhstan's warehouse receipts legislation

Key legislation: Law on Grain of 19 January 2001 and broader provisions in the Civil Code.

Scope: Grain: the fruits of cereal, legume and oilseed crops used for food, seed, feed or industrial purposes.

Institutional structure: The Ministry of Agriculture is the primary oversight institution for grain warehouses and receipts.

Authorization and oversight of warehouses: Under the Law on Grain, all grain warehouses must be licenced and public, open for general use under public-form storage contracts.

Guarantees: It is mandatory to either participate in the established guarantee fund or else take out private civil insurance to guarantee the performance of obligations under grain warehouse receipts.

Contractual rights and obligations of the parties and risk allocation: General obligations for storage and warehouse keepers are contained in the Civil Code.

Warehouse receipts: Kazakhstan exclusively provides for two-part grain warehouse receipts, consisting of a matching warehouse certificate and pledge certificate.

Transferability of warehouse receipts: Whereas paper receipts are not centrally registered outside of the issuing warehouse, electronic receipts must be registered in the centralized state register.

Settlement and release of stored goods: The holder of both parts of the grain warehouse receipt has full rights to settlement and release of the stored goods covered by the receipt. But when the two parts have been separated, the holder of only the warehouse certificate has the right to transfer the certificate and to dispose of the grain (only if any loan secured by pledging the pledge certificate is first repaid).

Execution and priority of obligations: The Law on Grain provides for an out-of-court procedure whereby a lender can recover on a defaulted loan based on a grain warehouse receipt.

Offenses and penalties: The Law on Grain outlines in explicit detail several layers of penalties for violations of the rules governing warehouses and the issuance of grain warehouse receipts.

⁷⁹⁵ See *ibid.*, p. 29.

⁷⁹⁶ See *ibid.*, p. 38.

⁷⁹⁷ Zhazykbayeva, 2012, p. 6.

ensure that private insurance meets adequate standards to maintain lender trust.

Like many other countries with a civil law legal tradition, Kazakhstan provides for two-part grain warehouse receipts, consisting of a warehouse certificate and a pledge certificate. These may be circulated together or separately – another feature that increases the instrument's attractiveness for depositors and lenders.

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The Philippines

Introduction to the agricultural sector and legal framework

Agriculture is an important component of the economy of the Philippines with regards to its contribution to GDP and its major role in employment.⁷⁹⁸ Even though agricultural outputs and productivity have improved over time, other areas of the economy have grown faster; thus, agriculture's share of national GDP has declined from 23 percent in 1995 to 11 percent in 2012.⁷⁹⁹ But in 2012, approximately 30 percent of the work force of the Philippines was employed in the agricultural sector.⁸⁰⁰ Although there are small, medium and large farms in the Philippines, smallholders make up a large portion of the sector, and these national trends are consistent with broader trends across Asia.⁸⁰¹ Thus, average farm sizes have been shrinking over the past few decades. As of 2002, the average farm size was fewer than two hectares, and 85 percent of all farms encompassed fewer than five hectares.⁸⁰²

In 2012, crops contributed 50 percent of agricultural output, with fisheries at 19 percent, livestock at 13 percent, poultry at 11 percent and agricultural services at 7 percent. The most important crop is *palay* (rice), which in 2012 contributed 40 percent of crop production value and 20 percent of agricultural production value. Other major crops include corn, coconut, banana, sugar cane, mango and pineapple. Agriculture accounted for 10 percent of exports from the Philippines in 2012, with the major export products being coconut oil, bananas, tuna and pineapples.⁸⁰³

Even though there have been output and labour productivity gains in recent years, the agricultural sector of the Philippines faces several challenges.⁸⁰⁴ The 2011–2015 Philippine Development Plan includes as a top policy priority transforming the agriculture (and

fisheries) sector into a more competitive and sustainable component of the economy.⁸⁰⁵ The Plan identifies many current challenges for the agricultural sector: limited access to formal credit and financing, the high cost of production inputs, inefficient supply chain and logistics systems, a low rate of adoption of mechanization and new technologies and weak agricultural extension services.⁸⁰⁶ Inadequate postharvest infrastructure has led to high postharvest losses in all crops, particularly fruits and vegetables.⁸⁰⁷ With respect to access to formal agricultural credit, several specific challenges are identified: "(a) the lack of track record among farmers; (b) lack of knowledge on accessing formal or bank financing, particularly putting together the required documents; (c) lack of acceptable collateral, delayed release of loans; and (d) numerous documentary requirements that formal lending institutions require from farmers upon commencement of transactions."⁸⁰⁸ Banks have avoided agricultural lending because of perceived high risks of non-repayment, small returns and high administrative costs.⁸⁰⁹

The Philippines has a rather complex legal system, with influences from Spanish, American, Filipino and Islamic legal traditions. Within this system, there are three distinct legal subsystems: formal, administrative and local (*barangay*).⁸¹⁰ As a partial civil law and partial common law system, the Philippines has 29 different codes. Article 8 of the 1949 Civil Code states that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines".⁸¹¹

The first law on warehouse receipts was enacted in 1912, followed by a law on bonded warehouses in 1932. However, warehouse receipts were rarely utilized for agricultural finance until the 1970s, when the *quedan* system for grain warehouse receipts was introduced.⁸¹²

⁷⁹⁸ NEDA, 2011, p. 102.

⁷⁹⁹ USAID, 2007, p. 152; Bureau of Agricultural Statistics, 2012, respectively.

⁸⁰⁰ See Bureau of Agricultural Statistics, 2013, p. 11.

⁸⁰¹ See IFAD, 2009, p. 6; FAO, 2013.

⁸⁰² FAO, 2013.

⁸⁰³ Bureau of Agricultural Statistics, 2012.

⁸⁰⁴ NEDA, 2011, p. 108.

⁸⁰⁵ See *ibid.*, generally.

⁸⁰⁶ *Ibid.*, pp. 108–111.

⁸⁰⁷ *Ibid.*, p. 109.

⁸⁰⁸ *Ibid.*, pp. 109, 110.

⁸⁰⁹ *Ibid.*, p. 110.

⁸¹⁰ USAID, 2007, p. 152.

⁸¹¹ ASEAN Law Association, 2010.

⁸¹² World Bank, 2005, Appendix 1.

The term *quedan* derives from the Philippines's Spanish colonial history and the Spanish word *quedar* (to deposit or leave behind).⁸¹³ In 1972, specific provisions on grain warehouses and grain warehouse receipts were included in the legislation.⁸¹⁴

Warehouse receipt legislation

The legislative framework for warehouse receipts in the Philippines is formed by the 1912 Warehouse Receipts Act and the 1932 Bonded Warehouse Act.⁸¹⁵ The Warehouse Receipts Act provides definitions for negotiable and non-negotiable warehouse receipts but not for warehouse receipts in general. In 1972, specific provisions on grain warehouses and grain warehouse receipts were included in the legislation (hereinafter "the National Food Authority [NFA] Act"), creating the National Grains Authority (now the NFA).⁸¹⁶ These provisions have been further developed through regulations administered by the NFA (hereinafter "the NFA Regulations").⁸¹⁷ Under these regulations, a grain warehouse receipt is defined as "1) the written acknowledgment by the warehouseman that he has received and holds the goods therein described for the person to whom it is issued; and 2) a contract between the owner of the goods and the warehouseman, the latter to store the goods and the former to pay compensation for that service."⁸¹⁸

In the NFA Act, the government declared that one of its main policy objectives was to institute "measures to fully establish the integrity and assure the negotiability of warehouse receipts evidencing grains in storage."⁸¹⁹ A separate regulatory regime exists for sugar warehouse receipts but is not explored in this study.⁸²⁰

⁸¹³ Quedancor, 2013.

⁸¹⁴ Sec. 3, Presidential Decree 1770, 1981.

⁸¹⁵ World Bank, 2005, Appendix 1.

⁸¹⁶ See Sec. 12-15, Presidential Decree 4, 1972, as amended; Sec. 3, Presidential Decree 1770, 1981.

⁸¹⁷ Revised Rules and Regulations of the NFA on Grains Business, 2006.

⁸¹⁸ *Ibid.*, Sec. 198 Reg. I.

⁸¹⁹ See Sec. 3(d), Presidential Decree 4, 1972, as amended.

⁸²⁰ The Sugar Regulatory Administration can "institute, implement and regulate an orderly system of quedanning, disposition and withdrawals of various forms of sugar from warehouses." Sec. 3(e), Executive Order 18, 1986.

The Warehouse Receipts Act contains five chapters on the issue of warehouse receipts: obligations and rights of warehouse keepers, negotiation and transfer of receipts, criminal offenses and interpretation.

Scope. Under the 1912 Warehouse Receipts Act, there is no limitation on the type of goods for which a warehouse receipt may be issued. Goods are broadly defined as "chattels or merchandise in storage or which has been or is about to be stored."⁸²¹

The 1932 Bonded Warehouse Act, which originally applied only to warehouses for rice, provides additional stipulations regarding warehousing activities. The Act was amended in 1948 by Republic Act No. 247, which substituted the word "commodity" for "rice," in order to expand the scope of the Bonded Warehouse Act to a range of products. The term commodity encompasses "any farm, agricultural or horticultural product; animal and animal husbandry or livestock, dairy or poultry product; water, marine or fish product; mineral, chemical, drug or medicinal product; forestry product; and any raw, processed, manufactured or finished product or by-product, good, article, or merchandise, either of domestic or of foreign production or origin, which may be traded or dealt in openly and legally."⁸²²

Further specific requirements for storing and issuing receipts for rice, corn or other grains in particular are provided under the NFA Act and supporting regulations.⁸²³ Grains are defined in the NFA Regulations as the "husked or unhusked, milled or unmilled, seeds or fruits of various food plants, more specifically the cereal grasses."⁸²⁴ Although currently unused, the NFA is given authority to add or remove any food products from the scope of its regulations.⁸²⁵ Separate rules are applied for sugar.

⁸²¹ *Ibid.*, Sec. 58.

⁸²² Sec. 1, Republic Act No. 247, 1948.

⁸²³ See Sec. 12-15, Presidential Decree No. 4, 1972, as amended.

⁸²⁴ Sec. 85 Reg. I, Revised Rules and Regulations of the NFA, 2006.

⁸²⁵ See Sec. 4 and 5, Presidential Decree 1770, 1981.

Hence, the Warehouse Receipts Act is broadest in scope and open to all storable goods. The Bonded Warehouse Act is narrower in that it is limited in scope to warehouses storing agricultural commodities. The NFA Act and supporting regulations are even narrower in that they only cover storage and receipts for grain.

Institutional structure. In the Philippines, the institutional framework for warehouse receipts is categorized by a multitude of different actors focusing on small parts of the overall picture. At the broadest level, the Department of Trade and Industry is the default licensor of commodity warehouses under the Bonded Warehouse Act, Section 3. Several institutions within the Department of Agriculture have a role to play with respect to warehouse receipts for various agricultural commodities. At the policy level, the Agricultural Credit Policy Council is an attached unit within the department⁸²⁶ that is charged with assessing and synchronizing agricultural credit policies as well as developing new agricultural credit mechanisms.⁸²⁷

The NFA is responsible for all government activities relating to processing, storing, transporting and marketing grains.⁸²⁸ Accordingly, the NFA has several enumerated powers, including the power to institute a system for grain warehouse receipts and to “register, licence and supervise warehouses, whether bonded or not, and mills; and to prescribe, impose and collect fees, charges, and/or surcharges in licensing and regulating warehouses and mills.”⁸²⁹ Furthermore, “[i]n order to further strengthen the quedan system, the council [of the NFA] shall promulgate such policy and/or restriction as may be desired to guarantee the integrity of the quedan [warehouse receipt] system and to encourage the banking system to finance and support the quedan system.” Regulation of warehouse receipts for sugar falls within the separate regulatory mandate of the Sugar Regulatory

Administration (SRA), an attached agency within the Department of Agriculture.⁸³⁰

Another attached unit within the Department of Agriculture, the Quedan and Rural Credit Guarantee Corporation (Quedancor), has as a policy objective setting up “a convenient credit-support mechanism and reliable guarantee system that shall effectively... [i]nstitutionalize the quedan or warehouse receipt and other negotiable instruments, evidencing stored agri-aqua produce in bonded warehouses, as the more convenient collateral for obtaining credit financing.”⁸³¹ To further this policy objective, Quedancor has powers to implement guarantee systems to promote financing, to issue and enforce rules for participating franchised warehouses, to print and provide special warehouse receipts for use with quedan guarantees and to create a system for accreditation of participants in the quedan guarantee system.⁸³² Quedancor is discussed further in Section 7.2.4.

Licensing and oversight of warehouses. Under the general framework of the Bonded Warehouse Act, commodity warehouse operators must secure an annual licence from the Department of Trade and Industry (DTI), formerly the Bureau of Commerce and Industry, prior to engaging in warehousing activities. The licence may be suspended or revoked for failure to comply with the Bonded Warehouse Act.⁸³³ To apply for a licence, the operator must state the location of the business and warehouses and the maximum amount of commodity that can be received. The application shall be accompanied by a bond in an amount fixed by DTI, which must be at least one-third of the market value of the maximum quantity of commodities to be received.⁸³⁴

Under the specific framework for grain, there are additional requirements for grain warehouses,

⁸²⁶ Sec. 19(a)(1), Executive Order 116, 1987.

⁸²⁷ Sec. 5, Executive Order 113, 1986; Sec. 21, Republic Act No. 7607, 1992.

⁸²⁸ Sec. 5(b), Presidential Decree No. 4, 1972, as amended.

⁸²⁹ Sec. 6(a), Presidential Decree No. 4, 1972, as amended.

⁸³⁰ The SRA is given the power to “institute, implement and regulate an orderly system of quedanning, disposition and withdrawals of various forms of sugar from warehouses.” Sec. 3(e), Executive Order 18 (1986). See also, Department of Agriculture, 2013.

⁸³¹ See Sec. 2 and 4, Republic Act No. 7393, 1992.

⁸³² *Ibid.*, Sec. 11.

⁸³³ Sec. 3 and 14, Bonded Warehouse Act, 1932.

⁸³⁴ *Ibid.*, Sec. 4.

which are defined as “any person or entity engaged in the business of accepting rice, corn and other grains, milled or unmilled, for deposit or storage, imposing a charge or charges by reason thereof, and engaging to deliver the grain deposited upon surrender of the receipt therefore.”⁸³⁵ Grain warehouses must be registered and licenced by the NFA.⁸³⁶ To receive a licence, warehouse operators must comply with NFA rules and regulations, be Filipino citizens and not have been convicted of a “crime of moral turpitude.”⁸³⁷ It is permissible to operate a licenced mill on the same premises as a licenced warehouse as long as separate accounts and contracts are kept for the separate operations. Notably, the legislation makes special provision for private banks to maintain grain warehouses, with a licence from the NFA and approval from the Central Bank of the Philippines.⁸³⁸

To apply for a grain warehouse licence and registration, applicants must submit to the NFA information regarding their identity, Filipino citizenship, ownership or lease rights to the premises, plans and details about the premises to be used, a fire insurance policy accredited by the NFA, a cash bond or surety bond of an amount and type to be determined by the NFA, a court record clearance and a schedule of storage fees to be charged.⁸³⁹

Licensing requirements for grain warehouses include that the following is provided for: a calibrated platform scale or suitable weighing equipment; a calibrated moisture meter if storing palay or corn; a dryer if storing palay or corn; fire extinguishers; fumigating and pest control equipment; sufficient pallets for storing bags of grain; rodent and bird proof and proper ventilation; and fixed partitions to segregate the bonded from the non-bonded portions (if

applicable).⁸⁴⁰ Licences and registrations are valid for one year.⁸⁴¹ Warehouse operators are required to notify the NFA if they cease doing business as a grain warehouse or change their line of business.⁸⁴²

Furthermore, for a licenced and registered grain warehouse to issue negotiable warehouse receipts, they must apply for a franchise. To apply for a franchise, a bonded, licenced warehouse operator must be “of good moral character, and must be of sound and stable financial and credit standing”, operate in an area with sufficient production for a warehouse to be profitable and maintain a warehouse that can store at least 5 000 cavans (or 50-kilogram bags of grain).⁸⁴³ Applicants must submit for review, two years of tax returns and audited financial statements, a confirmation of good standing from a bank, the seal of the warehouse and samples of authorized receipt signers.⁸⁴⁴ A franchise is issued for a period of five years contingent on maintaining a licence and registration, paying annual fees and complying with annual financial and tax statement submission requirements and other legal requirements.⁸⁴⁵

Although the frequency for inspections is not explicitly defined, warehouses must allow NFA inspectors access at any time.⁸⁴⁶ Furthermore, franchised warehouse operators can only issue their own receipts against stored commodities after the NFA has inspected the warehouse to verify the quantity and quality of the stored goods.

The Warehouse Receipts Act and Bonded Warehouse Act provide a few broad obligations for warehouse keepers in addition to the licensing requirements mentioned above.⁸⁴⁷ Licenced warehouses must keep detailed records of the commodities stored and receipts

⁸³⁵ Sec. 12, Presidential Decree No. 4, 1972, as amended.

⁸³⁶ Ibid., Sec. 13; see also, Sec. 2–4, Reg. II, Revised Rules and Regulations of the NFA, 2006.

⁸³⁷ Sec. 13, Presidential Decree No. 4, 1972, as amended; see also, Sec. 1, Reg. III, Revised Rules and Regulations of the NFA, 2006.

⁸³⁸ Sec. 13, Presidential Decree 4, 1972, as amended.

⁸³⁹ Sec. 5 Reg. IV and Sec. 2(G)(j), Reg. XV, Revised Rules and Regulations of the NFA, 2006.

⁸⁴⁰ Ibid., Sec. 7(A)(4), Reg. IV.

⁸⁴¹ Ibid., Sec. 15, Reg. IV.

⁸⁴² Ibid., Sec. 19 and 20, Reg. IV.

⁸⁴³ Ibid., Sec. 1 and 2, Reg. VII.

⁸⁴⁴ Ibid., Sec. 4, Reg. VII.

⁸⁴⁵ Ibid., Sec. 6, Reg. VII.

⁸⁴⁶ See generally, *ibid.*, Reg. XV.

⁸⁴⁷ See e.g., Sec. 3-6, Bonded Warehouse Act, 1932.

issued and cancelled, as well as make reports to DTI as requested.⁸⁴⁸

The NFA Regulations detail further obligations for grain warehouse operators. They must display in a conspicuous place the licence and franchise sign (if applicable) mandated by the NFA.⁸⁴⁹ Grain warehouses must comply with uniform recordkeeping and accounting practices and submit weekly stock reports to the NFA.⁸⁵⁰ Only franchised warehouse operators may issue negotiable warehouse receipts upon deposit of third-party grain in their warehouse.⁸⁵¹ Warehouse operators must allow NFA inspectors access and provide them assistance at any time.⁸⁵²

Performance guarantees. The legal framework of the Philippines includes some guarantee mechanisms in the form of mandatory bonding requirements. General commodity warehouses must include with their licence application a bond in an amount fixed by DTI, which must be at least one-third of the market value of the maximum quantity of commodities to be received.⁸⁵³ Similarly, grain warehouse operators applying and registering for a licence must post a guarantee bond that meets NFA requirements and covers at least one-third of the current market value of the maximum available grain storage (or one-half of the value of the leased premises). There is a detailed public notice procedure when warehouses cancel their bond and, therefore, their licence.⁸⁵⁴

However, banks in the Philippines have not viewed these bonding requirements as sufficient and have tended to view agricultural commodities as unacceptable collateral, even if held in bonded warehouses.⁸⁵⁵ Although the Philippines enacted the Warehouse Receipts Act in 1912,

the system was not widely used for agricultural finance until the quedan guarantee system was introduced during the 1970s.⁸⁵⁶ To “accelerate the flow of investments and credit resources into the countrywide so as to trigger the vigorous growth and development of rural productivity, employment and enterprises thereby generating more livelihood and income opportunities for the disadvantaged rural populace,”⁸⁵⁷ the Quedan Financing Programme was instituted in 1978 under the Quedan Guarantee Fund Board,⁸⁵⁸ which became the Quedan and Rural Credit Guarantee Corporation (Quedancor) in 1992.⁸⁵⁹ The quedan guarantee scheme uses additional third-party guarantees, warehouse accreditations, warehouse inspections and warehouse certifications beyond what is required by the legal framework to make warehouse receipts more attractive collateral.⁸⁶⁰

Prospective participating warehouses must present a copy of the certificate of franchise, a warehouse receipt, a stock inspection report, an affidavit of stock ownership and evidence that the stock is insured, in addition to posting a security bond for the NFA for one-third of the stored stock’s value. Loans under the quedan guarantee scheme are for up to 180 days for rice, but only 90 days for other grains. The stored goods are inspected at least twice during a 180-day period by Quedancor officials. When the warehouse receipt is pledged and a loan is released, the lending bank applies to Quedancor for a guarantee. The Quedancor guarantee is good for up to 80 percent of the value of the stored goods.⁸⁶¹

Contractual rights and obligations of the parties and risk allocation. Licenced warehouses are forbidden to discriminate between depositors as long as the commodities being deposited are in suitable condition for storage, are of the type customarily stored by the warehouse and fall within the stated capacity

⁸⁴⁸ Ibid., Sec. 9.

⁸⁴⁹ Sec. 2(A), Reg. XV, Revised Rules and Regulations of the NFA, 2006.

⁸⁵⁰ Sec. 15, Presidential Decree No. 4, 1972, as amended; see also, Sec. 2(C) and (D), Reg. XV, Revised Rules and Regulations of the NFA, 2006.

⁸⁵¹ Sec. 2(B), Reg. XV, Revised Rules and Regulations of the NFA, 2006.

⁸⁵² Ibid., Sec. 2(E).

⁸⁵³ Sec. 4, Bonded Warehouse Act, 1932.

⁸⁵⁴ Sec. 2, Reg. VI, Revised Rules and Regulations of the NFA, 2006.

⁸⁵⁵ Coulter & Shepherd, 1995, p. 54.

⁸⁵⁶ World Bank, 2005, Appendix 1.

⁸⁵⁷ Sec. 2, Republic Act No. 7393, 1992.

⁸⁵⁸ See generally, Letter of Instructions No. 704, 1978.

⁸⁵⁹ Sec. 4, Republic Act No. 7393, 1992.

⁸⁶⁰ See *ibid.*, Sec. 11. See also, Rutten, 1999.

⁸⁶¹ Coulter & Shepherd, 1995, pp. 52-53.

and licence requirements of the warehouse.⁸⁶² Warehouses must store and deliver goods upon presentation of a valid receipt and satisfaction of storage charges.⁸⁶³ A warehouse operator shall immediately issue a negotiable or non-negotiable warehouse receipt for grains that are delivered and received for storage.⁸⁶⁴ The receipt holder or the depositor must satisfy the warehouse operator's lien and surrender the receipt.⁸⁶⁵

A warehouse operator must keep goods separate, except in the case of fungible goods, which may be commingled if authorized by agreement or custom.⁸⁶⁶ Operators must maintain pest-control practices and provide public and specific notice (to depositors) if they are aware that stored goods are deteriorating.⁸⁶⁷ If goods are perishable, liable to injure other property or likely to deteriorate greatly in value, the warehouse operator can give notice to the owner to satisfy the lien on the goods and remove them from the warehouse.⁸⁶⁸

A warehouse operator is liable for any loss or injury to the goods.⁸⁶⁹ In the event of commingling of goods, the warehouse operator is severally liable to each depositor to care for and redeliver the depositor's share of the goods.⁸⁷⁰

Warehouse receipts. The Warehouse Receipts Act provides general requirements regarding the contents of a warehouse receipt. Warehouse receipts include the following details:

- the location of the warehouse where the goods are stored;
- the date of issue of the receipt;
- the consecutive number of the receipt;
- a statement whether the goods received will be delivered to the bearer, to a specified person or to a specified person or his order;

- the rate of storage charges;
- a description of the goods or of their packages;
- the signature of the warehouse operator or an authorized agent;
- if the receipt is issued for goods owned by the warehouse operator, either solely or jointly or in common with others, the fact of such ownership;
- a statement of the amount of advances made and of liabilities incurred for which the warehouse operator claims a lien. If the precise amount is, at the time of the issue unknown to the warehouse operator or an agent, a statement of the fact that advances have been made or liabilities incurred and their purpose is sufficient.⁸⁷¹

The inclusion of other terms is admissible provided that they are not contrary to the Warehouse Receipts Act and do not impair the warehouse operator's obligation to exercise reasonable care in the safekeeping of the goods. No particular form is required for general warehouse receipts.⁸⁷²

The Warehouse Receipts Act also defines negotiable and non-negotiable receipts. A non-negotiable receipt states that the goods received will be delivered to the depositor or to any other specified person. A negotiable receipt, on the other hand, states that the goods received will be delivered to the bearer or to the order of any person named in the receipt.⁸⁷³ Non-negotiable receipts must be marked non-negotiable.⁸⁷⁴ Negotiable receipts must be cancelled when goods are delivered, and cancelled or marked when a part of the goods is delivered.⁸⁷⁵ Goods that a negotiable receipt was issued for cannot, while in the possession of the warehouse operator, be attached or levied upon under an execution unless the receipt is first surrendered to the warehouse operator, or its negotiation is enjoined.⁸⁷⁶ The Negotiable Instruments Law of

⁸⁶² Sec. 8, Bonded Warehouse Act, 1932.

⁸⁶³ See Sec. 8–11, Warehouse Receipts Act, 1912.

⁸⁶⁴ Sec. 4, Reg. VIII, Revised Rules and Regulations of the NFA, 2006.

⁸⁶⁵ Sec. 8, Warehouse Receipts Act, 1912.

⁸⁶⁶ See *ibid.*, Sec. 21–23.

⁸⁶⁷ Sec. 2(F), Reg. XV, Revised Rules and Regulations of the NFA, 2006.

⁸⁶⁸ Sec. 34, Warehouse Receipts Act, 1912.

⁸⁶⁹ See *ibid.*, Sec. 21–23.

⁸⁷⁰ See *ibid.*, Sec. 23 and 24.

⁸⁷¹ *Ibid.*, Sec. 2.

⁸⁷² *Ibid.*, Sec. 2 and 3.

⁸⁷³ *Ibid.*, Sec. 4 and 5.

⁸⁷⁴ *Ibid.*, Sec. 5 and 7.

⁸⁷⁵ *Ibid.*, Sec. 11 and 12.

⁸⁷⁶ *Ibid.*, Sec. 25.

1911 and the 1949 Civil Code of the Philippines⁸⁷⁷ provides more detailed provisions regarding the form, liabilities and discharge of negotiable instruments.

Grain warehouse receipts must be issued on forms provided by the NFA and comply with its regulations.⁸⁷⁸ Forms are colour-coded based on the particular grain commodity and quantity.⁸⁷⁹ Grain warehouse receipts may be non-negotiable or negotiable, but negotiable receipts can only be issued by franchised warehouses.⁸⁸⁰ Consisting of three parts (one for the warehouse, one for the depositor and one for the NFA), grain warehouse receipts, or *quedans*, are single receipts.⁸⁸¹ “A negotiable warehouse receipt for rice or corn or other grain shall be printed, serially numbered, on security notepaper, in specific quantity in demonstration of 5, 10, 20, 50, or 100 cavans (50 kg bags of grain) contain the name and business address of the warehouseman, the variety, classification, moisture content and quality of the grain deposited, the warranties of the warehouseman prescribed by existing law, and the charges and authorized liens on the stocks in deposit.”⁸⁸²

While there is currently no central registry of grain warehouse receipts or provision for electronic receipts, warehouses must keep detailed records in the format provided by regulations, to be inspected by the NFA. These warehouse receipt records must include the following: names and addresses of the depositors; dates of deposits; serial numbers of bonded warehouse receipts issued; variety, moisture content, quantity of stored grain; storage fees charged; all withdrawals made by the depositors or holders of warehouse receipts; and a cancellation of the corresponding warehouse receipts surrendered.⁸⁸³

Negotiation and transfer of warehouse receipts.

Negotiable receipts may be negotiated by delivery or endorsement. Endorsement of a non-negotiable receipt gives the transferee no additional right.⁸⁸⁴ A person to whom a receipt has been duly negotiated thereby acquires the same rights and title as the person negotiating the receipt had or had ability to convey, as well as the direct obligation of the warehouse operator to hold possession of the goods.⁸⁸⁵ A person to whom a receipt has been transferred but not negotiated acquires the title of the goods as against the transferor, subject to the terms of any agreement with the transferor.⁸⁸⁶ It is important to note that the negotiation of a receipt is still valid even if the negotiation was a breach of duty, if the owner of the receipt was induced to entrust the possession or custody of the receipt to a person by fraud, mistake or duress or if the person to whom the receipt was subsequently negotiated paid its value, without notice of the breach of duty, fraud, mistake or duress.⁸⁸⁷

Under the 1949 Civil Code of the Philippines, negotiable and non-negotiable warehouse receipts can be pledged as a guarantee to obtain a loan.⁸⁸⁸ If a person sells, mortgages or pledges goods that are in a warehouse, subject to a negotiable receipt and still possesses this receipt, any subsequent negotiation and sale thereof have the same effect as if the first purchaser of the goods or receipt expressly authorized the negotiation, if the goods were received in good faith, for value and without notice of the previous sale, mortgage or pledge.⁸⁸⁹

Settlement and release of stored goods. A warehouse operator must deliver the goods when asked either by the holder of a receipt for the goods or by the depositor, provided that the demand is accompanied by (a) an offer to satisfy the warehouse operator’s lien; (b) an offer to surrender the receipt, if negotiable, with endorsements necessary for its negotiation; and (c) a willingness to sign an acknowledgement of

⁸⁷⁷ See generally, Arts. 1508 et seq. and 2093 et seq., Civil Code.

⁸⁷⁸ Sec. 14, Presidential Decree No. 4, 1972, as amended.

⁸⁷⁹ See Sec. 3, Reg. VIII, Revised Rules and Regulations of the NFA, 2006.

⁸⁸⁰ See *ibid.*, Sec. 1, Reg. VIII.

⁸⁸¹ *Ibid.*, Sec. 2, Reg. VIII.

⁸⁸² Sec. 14, Presidential Decree No. 4, 1972, as amended.

⁸⁸³ See Sec. 7, Reg. VIII, Revised Rules and Regulations of the NFA, 2006.

⁸⁸⁴ Sec. 37–39, Warehouse Receipts Act, 1912.

⁸⁸⁵ *Ibid.*, Sec. 41.

⁸⁸⁶ *Ibid.*, Sec. 42.

⁸⁸⁷ *Ibid.*, Sec. 47.

⁸⁸⁸ Art. 2095, Civil Code.

⁸⁸⁹ Sec. 48, Warehouse Receipts Act, 1912.

delivery of the goods.⁸⁹⁰ As warehouse operators are liable for delivery, they have a reasonable time to determine the validity of claims, and in the event of adverse claimants, the warehouse operator can require all known claimants to interplead.⁸⁹¹

A warehouse operator has a lien upon the deposited goods for all lawful charges for the goods' storage and preservation and for money advanced, interest, insurance, transportation, labour, weighing and other related charges, as well as expenses for notice and advertisements of sale. To satisfy the lien, the warehouse operator must have an itemized statement showing the sum due, a brief description of the goods against which the lien exists and a demand for payment with a statement that says unless the claim is paid within the time specified, the goods will be advertised for sale and sold by auction at a specified time and place.⁸⁹²

The warehouse operator can sell the goods at auction to satisfy any valid claim for which he has a lien on the goods, after publishing notice once a week for two consecutive weeks in a local newspaper or posting an advertisement at least ten days prior in at least six conspicuous places. The balance, if any, shall be delivered to the owner of the goods.⁸⁹³ A warehouse operator loses his lien by surrendering possession of the goods or by refusing to deliver goods when a demand is made.⁸⁹⁴

Regarding grain warehouse receipts, a franchised bonded warehouse cannot release stored goods until a receipt has been surrendered and cancelled, and then the warehouse operator must surrender the cancelled receipt to the NFA within 24 hours.⁸⁹⁵ Warehouses may issue duplicate receipts after loss or destruction of the original and notifying the public for three weeks.⁸⁹⁶

Execution and priority of obligation. The legal framework for warehouse receipts in the Philippines does not provide for out-of-court enforcement mechanisms in the event of debtor default.⁸⁹⁷ In terms of claim priority, the rights of any purchaser for value in good faith to whom a negotiable receipt has been negotiated shall not be defeated by any seller's lien or right of stoppage in transit.⁸⁹⁸

Offences and penalties. The Warehouse Receipts Act provides a list of criminal offenses related to general warehouse receipts, including issuing a receipt for goods not received, with a false statement or, for a warehouse operator's goods without indicating the fact of ownership; issuing a duplicate receipt that is not marked as one; delivering goods without obtaining a negotiable receipt; and negotiating a receipt for mortgaged goods or those without title. These offences can be penalized by fines or imprisonment.⁸⁹⁹ The Bonded Warehouse Act details the obligations of warehouse operators and provides for penalties for certain infractions. Anyone engaging in warehousing without a licence is guilty of a misdemeanour and liable to a fine and imprisonment, and anyone receiving a quantity larger than that allowed by his licence is fined double the market value of the commodity in excess of the authorized quantity.⁹⁰⁰

There are further specific penalties related to the storage of and issuance of receipts for grain. The NFA is given broad powers of enforcement, arrest and administrative sanction (revocation of licences and franchises), and the procedures for disciplinary action are provided by the NFA Regulations.⁹⁰¹ A franchise (the right to issue negotiable grain warehouse receipts) is revoked by the NFA upon a finding of fraud or other violations of the rules governing warehouses.⁹⁰²

The NFA Act outlines three tiers of offenses: serious, less serious and light offenses. Relevant

⁸⁹⁰ Ibid., Sec. 8.

⁸⁹¹ See *ibid.*, Sec. 10, 17 and 18.

⁸⁹² Ibid., Sec. 33.

⁸⁹³ Ibid.

⁸⁹⁴ Ibid., Sec. 28–29.

⁸⁹⁵ See Sec. 6, Reg. VIII, Revised Rules and Regulations of the NFA, 2006.

⁸⁹⁶ See *ibid.*, Sec. 3, Reg. VIII.

⁸⁹⁷ See Sec. 26, Warehouse Receipts Act, 1912.

⁸⁹⁸ Ibid., Sec. 49.

⁸⁹⁹ Ibid., Sec. 50–55.

⁹⁰⁰ Sec. 11 and 12, Bonded Warehouse Act, 1932.

⁹⁰¹ See generally, Reg. XVII, Revised Rules and Regulations of the NFA, 2006.

⁹⁰² Ibid., Sec. 6, Reg. VII.

for this study, serious offenses include “failure or refusal of a grains warehouseman, without any lawful excuse, to deliver grains deposited with him,” and “printing, issuing or knowingly using, possessing or negotiating a cancelled, unauthorized, illegal counterfeit or falsified warehouse receipt.”⁹⁰³ Notably, “failure of any warehouseman engaged in the business of accepting grains for storage or deposits to deliver the stock of grains on deposit upon surrender of the warehouse receipt therefore, shall render the warehouseman liable for the crime of estafa.”⁹⁰⁴ Serious offenses are punished by imprisonment of not less than four years plus one day and not more than six years, or by a fine of not less than PHP 12 000 and not more than PHP 15 000.

Less serious offenses include running a grain warehouse without a licence, misrepresenting information on a licence application and concealing grain shortages in a warehouse. Less serious offenses are punished by imprisonment of not less than six months and one day but not more than four years, or a fine of not less than PHP 4 000 but not more than PHP 8 000, or both. Light offences include issuing grain warehouse receipts exceeding the warehouse’s insurance or bond coverage, or any other non-compliance with the law not listed as serious or less serious. Light offenses are punished by imprisonment of not less than one month but not more than six months, or a fine of not less than PHP 1 000 but not more than PHP 4 000, or both.⁹⁰⁵

Conclusion

The legislative framework for warehouse receipts in the Philippines traces its origins back 100 years to the 1912 Warehouse Receipts Act and the 1932 Bonded Warehouse Act.⁹⁰⁶ Further sector-specific refinements have been made over time so as to develop regimes for grain and sugar because of the importance of these industries within the agricultural sector.

Box 14: At a glance – the Philippines’s warehouse receipts legislation

Key legislation: 1912 Warehouse Receipts Act, 1932 Bonded Warehouse Act and 1972 NFA Act.

Scope: The Warehouse Receipts Act is broadest in scope and open to all storable goods. The Bonded Warehouse Act is narrower in that it is limited to warehouses storing agricultural commodities. The NFA Act and supporting regulations are even narrower in that they only cover storage and receipts for grain.

Institutional structure: A multitude of different actors focus on various sectors and aspects.

Authorization and oversight of warehouses: For grain warehouse operators to issue negotiable warehouse receipts, they must apply for a licence and a franchise.

Guarantees: The quedan guarantee scheme uses additional third-party guarantees, warehouse accreditations, warehouse inspections and warehouse certifications.

Contractual rights and obligations of the parties and risk allocation: Warehouses must store and deliver stored goods upon presentation of a valid receipt and satisfaction of storage charges. A warehouse operator is liable for lost or damaged goods.

Warehouse receipts: Grain warehouse receipts may be non-negotiable or negotiable, but only franchised warehouses can issue negotiable receipts. Forms are colour coded based on the particular grain commodity and quantity covered.

Transferability of warehouse receipts: Negotiable receipts may be negotiated by delivery or by endorsement; endorsement of a non-negotiable receipt gives the transferee no additional right. There is currently no central registry of grain warehouse receipts or provision for electronic receipts.

Settlement and release of stored goods: A warehouse cannot release stored goods until a receipt has been surrendered and cancelled, and then the warehouse operator must surrender the cancelled receipt to the overseeing authority.

Execution and priority of obligations: The Philippines does not provide for out-of-court enforcement mechanisms in the event of debtor default.

Offenses and penalties: The NFA Act outlines three tiers of offenses: serious, less serious and light offenses.

⁹⁰³ Sec. 29, Presidential Decree No. 4, 1972, as amended.

⁹⁰⁴ Ibid., Sec. 15. Estafa is known as swindling in other legal systems. See Art. 315, Revised Penal Code of the Philippines, 1930.

⁹⁰⁵ Sec. 29, Presidential Decree No. 4, 1972, as amended.

⁹⁰⁶ World Bank, 2005, Appendix 1.

However, the system for warehouse receipts in the Philippines has not functioned optimally as a facilitator for agricultural credit because banks in the Philippines do not trust the system and have tended to view agricultural commodities as unacceptable collateral, even if held in bonded warehouses.⁹⁰⁷ Stored goods frequently disappear from licenced warehouses.⁹⁰⁸ Another challenge is that the Philippines has a relatively complex legal framework for warehouse receipts constituted by a range of general and sector-specific laws and regulations enacted during the past century.

A few key elements of the framework are missing or could be strengthened, such as instituting efficient out-of-court enforcement procedures, creating a central receipts registry and strengthening inspections and penalties to minimize events where grain covered by receipts goes missing. Furthermore, the system is complicated by the fact that the institutional framework for warehouse receipts is categorized by a complex multitude of different actors focusing on small parts of the overall picture.

In recent years, the government of the Philippines has tried various new measures to improve the warehouse receipt system and the provision of agricultural credit, including a focus on both smallholders and millers. Smallholders make up a large portion of the agricultural sector in the Philippines.⁹⁰⁹ And as in other Asian countries, large commercial mills are typical, and small farmers usually do not have a leading role in the storage of grain. Accordingly, millers have become the targets for warehouse receipt financing.⁹¹⁰ By facilitating credit for them, they then often extend credit to farmers and supply farmers with inputs at planting time.⁹¹¹

The quedan guarantee scheme administered by Quedancor has focused on both smallholders and millers and addressed several challenges by providing additional measures for warehouse

inspections, warehouse accreditations and performance guarantees. According to Quedancor figures, between 1978 and 2013, Quedancor was able to channel “PHP 47.59 billion worth of loans to 5.08 million farmers, fisherfolk, retailers, millers and small entrepreneurs nationwide under its various guarantee and credit programs.”⁹¹² The government continues to try to improve credit flow, including a 2010 law mandating that banks devote set minimum percentages of their portfolios for agricultural sector loans.⁹¹³

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⁹⁰⁷ Coulter & Shepherd, 1995, p. 54.

⁹⁰⁸ See e.g., Osmenia, 2004.

⁹⁰⁹ See IFAD, 2009, p. 6; FAO, 2013.

⁹¹⁰ Coulter & Shepherd, 1995, p. 33.

⁹¹¹ Ibid., p. 54.

⁹¹² Quedancor, 2013.

⁹¹³ Republic Act No. 10000, 2010.

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Tanzania

Introduction to the agricultural sector and legal framework

The Tanzanian economy depends heavily on agriculture. The agriculture industry accounts for more than one-quarter of the GDP, employs approximately 80 percent of the workforce and provides 85 percent of exports. Tanzania's main food crops are maize, cassava, rice and sugar cane, and the main cash crops are coffee, cashew nuts, tea, cotton and sisal.⁹¹⁴ Agriculture is dominated by smallholder farmers.⁹¹⁵ Only 25 percent of Tanzanians live in urban areas, and the majority of farmers grow small rural plots for domestic consumption.⁹¹⁶

Tanzania's socialist policies following independence resulted in a state-controlled, single-channel marketing system, with marketing boards as the sole exporters and cooperatives as their sole agents. Under this system, the government maintained panterritorial and panseasonal pricing policies for the coffee and cotton sectors.⁹¹⁷ After liberalization between the mid-1980s and mid-1990s, competition from private buyers diminished the dominance of cooperative unions in domestic procurement. During the same period, the government stopped fixing producer prices and scaled back its involvement in supplying farm inputs.⁹¹⁸

For Tanzanian smallholder farmers, among the major challenges today are the lack of storage facilities for their agricultural produce and limited access to markets. Postharvest loss rates are high due to poor storage facilities and infrastructure.⁹¹⁹ Smallholder farmers need working capital, yet they often lack access to credit because they cannot provide sufficient collateral. This need for capital, combined with a lack of storage facilities, leads smallholder farmers to sell their produce directly after harvest when prices are low, rather than wait for prices to rise again when market supply declines.

To help address these problems, the government – with support from international donors including the International Fund for Agricultural Development (IFAD) and the Common Fund for Commodities (CFC) – introduced numerous warehouse receipt pilot initiatives. The first initiative was a system for coffee and began under the Tanzania Coffee Board in 1998.⁹²⁰ In 2002, the Government of Tanzania, together with IFAD, launched the Agricultural Marketing Systems Development Programme (AMSDP), which piloted an inventory credit scheme through a warehouse receipt system for cereals in 11 districts. It enabled smallholder farmers to store their agricultural produce after harvest and to wait to sell until market prices rose again, and in the meantime they could access finance from commercial banks through mediation of Savings and Credit Cooperative Societies (SACCOs).

SACCOs are cooperatives formed by local communities that can perform substantial business ventures on behalf of their members, including purchasing and selling produce and obtaining and providing credit. They are the leading microfinance institutions in rural areas and are strongly supported by the government.⁹²¹ At the beginning of the harvesting season, SACCO managers submit a loan application to a bank, and a farmer can use the warehouse receipt as collateral to obtain a loan from the SACCO for up to 70 percent of the deposited stock's value. This scheme led to an increase of up to 300 percent in farm-gate prices, thereby improving household incomes; it also improved the quality of their produce, and increased the farmer's access to financial services and loans.⁹²²

The government subsequently formalized this system (with assistance from IFAD) through the development of the first law governing warehouse receipts in Tanzania. The Warehouse Receipts Act (hereafter "the WRA") was enacted in 2005 to provide a legal framework for replicating the programme across the country.⁹²³ As a former British colony, Tanzania's

⁹¹⁴ World Bank Indicators, 2014; FAOSTAT, 2014.

⁹¹⁵ Salami, Kamara & Briziova, 2010, p. 8.

⁹¹⁶ USAID, 2010, p. 1.

⁹¹⁷ Onumah & Butterworth, 2005, p. 4; UNCTAD, 2009, p. 25.

⁹¹⁸ Onumah & Butterworth, 2005, p. 5.

⁹¹⁹ Ibid., p. 1.

⁹²⁰ See UNCTAD, 2009, p. 45.

⁹²¹ USAID, 2010, p. 59; UNCTAD, 2009, p. 26.

⁹²² IFAD, 2011, p. 134; IFAD, 2012, p. 2.

⁹²³ IFAD, 2011, p. 134.

legal system is characterized by a combination of common law and customary law traditions.⁹²⁴ The warehouse receipt system is governed by the WRA and complemented by subordinate regulations.

Following the implementation of the WRA, Tanzania passed subsequent acts governing crop-specific subsectors, such as the Cashewnut Industry Act of 2009 and the Cereals and Other Produce Act of 2009. The Cashewnut Industry Act established the Cashewnut Board and contains provisions on cashew nut production, grading, processing, marketing and other related matters including specific requirements for cashew nut warehouses. Under the Cashewnut Industry Act, the Cashewnut Board of Tanzania works within the Ministry of Agriculture, Cooperatives and Food Security and coordinates and facilitates operations of the warehouse receipt system and quality control for cashew nuts.⁹²⁵ The Cereals and Other Produce Act of 2009 established the Cereals and Other Produce Board and contains some provisions related to warehousing and quality control of cereals and other agricultural produce.

Warehouse receipt legislation

The Warehouse Receipts Act of 2005 is organized into nine parts that cover the following topics: the establishment of the warehouse licensing board and its financing, warehouse licensing procedures, warehouse receipts, rights and obligations of warehouse operators, negotiation and transfer of warehouse receipts and offences and penalties. Subordinate regulations promulgated in 2006 under Section 79 of the Act (hereafter “the Regulations”) contain further details on the operations of the Warehouse Licensing Board; licences and licensing procedure; bonds, insurance and other securities; warehouse receipts; delivery of goods; inspection, grading and weighing; and miscellaneous topics.

Although developed only recently, Tanzania’s warehouse receipt legislation appears to serve as an inspiration for other East African

countries. For example, in 2005 Uganda sent a delegation of exporters, medium-scale traders, representatives of farmer organizations and bank representatives on a study tour in Tanzania to gain a better understanding of the warehouse receipt system, and one year later in 2006 it enacted its first warehouse receipt system act.⁹²⁶ Likewise, Zambia followed five years later and enacted its first act on warehouse receipts in 2010, which in parts strongly resembles the Tanzanian act.⁹²⁷

Scope. The WRA applies to “all agricultural commodities and to such other goods as the Minister may declare by order published in the Gazette.”⁹²⁸ The minister is the minister responsible for marketing of agricultural commodities. A warehouse receipt is defined as “a receipt issued by a warehouse operator in respect of storage, handling or shipment of the commodity.”⁹²⁹ The WRA does not specify or limit the goods for which a warehouse receipt may be issued, so that, in view of the act’s scope, a warehouse receipt could be issued for all agricultural commodities and other goods declared by the minister.

Institutional structure. The WRA established the Tanzania Warehouse Licensing Board (hereafter “the Board”) as a corporate body whose functions include the licensing of warehouses, warehouse operators and warehouse inspectors; approving negotiable warehouse receipts books; and carrying out any other functions conferred upon it by the WRA or minister responsible for marketing of agricultural commodities.⁹³⁰ For carrying out these functions, the powers of the Board include the investigation of the receiving, storing, conditioning, shipping and handling of

⁹²⁶ See Onumah, & Butterworth, 2005, pp. 11, 12.

⁹²⁷ The Agricultural Credits Bill No. 35, 2010. The bill establishes the Warehouse Licensing Authority and contains provisions on warehouse registration, warehouse receipts, the rights and obligations of warehouse operators, the negotiation and transfer of warehouse receipts and offences and penalties. It was enacted after a pilot project for establishing a regulated warehouse receipt system was introduced in 2001 funded by the Common Fund for Commodities. See UNCTAD, 2009, p. 21. In Zambia, a warehouse receipt system regulated through the act of 2010 is expected to reduce persistent problems in agricultural marketing and credit systems such as highly variable seasonal prices, fraud on weights and quality and limited access of farmers to credit. See MACO, ACF and FSRP, 2011, p. 13.

⁹²⁸ Sec. 2, Warehouse Receipts Act, 2005.

⁹²⁹ Ibid., Sec. 3.

⁹³⁰ Ibid., Sec. 4 and 5.

⁹²⁴ See Judicature and Application of Laws Act, Ch. 358, 1961.

⁹²⁵ UNIDO, 2011, p. 46.

commodities; the inspection of any warehouse, commodities stored and all pertaining property and records; the determination of the suitability of warehouses for which licences are applied for or have been issued for receiving, storing, conditioning, shipping and handling the stored or expected commodities; the prescription of all forms, including the forms of receipts and applications for licences; the prescription of the duties of warehouse operators conducting licenced warehouses, with respect to their care of and responsibility for the stored goods; the provision of guidelines and standards for the suitability for the proper storage of the goods for which a licence is applied; and the suspension and revocation of warehouse licences for any contravention of or failure to comply with any provision of the Act or regulations.⁹³¹

The WRA further contains provisions on the internal structure of the Board and its financing. A schedule to the WRA prescribes the composition, tenure and procedure for meetings of the Board. The Board shall consist of representatives of public and private sector stakeholders, including a representative of the ministry responsible for crop marketing, two representatives of the cooperative societies and one representative from the organization of Tanzania's private farmers, the Tanzania Bankers Association, the Tanzania Insurers Association, the farmers and the warehouse operator's association or organization.⁹³² The Board established under the WRA was created with support of AMSDP,⁹³³ and it receives technical support from CFC.⁹³⁴ The WRA Section 79 empowers the minister responsible for marketing of agricultural commodities to issue its implementing regulations.

Licensing and oversight of warehouses. The WRA establishes a warehouse licensing scheme, which is further detailed by the Regulations. Any person wishing to conduct a warehouse shall apply to the Board for a warehouse licence.⁹³⁵

The WRA Section 18 establishes five criteria that must be met before a licence is granted:

- possession of the warehouse by the applicant as either tenant or owner;
- suitability of the warehouse for storing the particular goods;
- good business and management records and no involvement in any criminal proceedings involving business and dishonesty or impropriety on the part of the warehouse director or manager;
- full insurance of the warehouse and its stored goods against fire, theft, burglary or any other damage;
- financial capability of the applicant to conduct warehousing.

A warehouse operator applying for a licence is required to execute and file with the Board a bond that is sufficient to secure performance of the warehouse operator's obligations under the WRA and its subsidiary legislation.⁹³⁶ The amount of the bond is determined by the Board depending on an assessment of the warehouse business, and should not be less than 10 percent of the business's value.⁹³⁷ Each applicant must also file a certificate of insurance with the Board, evidencing an effective insurance policy for the full market value of all commodities that are or may be in the warehouse against loss by fire, theft, burglary, arson or any other risk that the Board prescribes.⁹³⁸ Finally, applicants must also file a list of commodities proposed to be warehoused together with a schedule of charges; these charges may not be altered without the Board's approval.⁹³⁹

Once a licence has been granted, it is valid for 12 months and is renewable.⁹⁴⁰ In the case of a violation of or failure to comply with the requirements of the WRA, the Board can revoke, suspend or deny a licence.⁹⁴¹

⁹³¹ Ibid., Sec. 6.

⁹³² Sec. 1(2), Schedule to the Warehouse Receipts Act, 2005.

⁹³³ IFAD, 2012, p. 2.

⁹³⁴ UNCTAD, 2009, p. 26.

⁹³⁵ Sec. 15 and 16, Warehouse Receipts Act, 2005.

⁹³⁶ Ibid., Sec. 19(1).

⁹³⁷ Sec. 31(1) and (3), Warehouse Receipts Regulations, 2006.

⁹³⁸ Sec. 22(1), Warehouse Receipts Act, 2005.

⁹³⁹ Ibid., Sec. 25.

⁹⁴⁰ Ibid., Sec. 17.

⁹⁴¹ Ibid., Sec. 26.

The Board should inspect any warehouse applying for a licence to determine whether it is suitable for storing the particular type of goods for which a licence is sought.⁹⁴² The Board can inspect any warehouse, its pertaining property and records and its stored commodities, and it can investigate the storage, grading, weighing and certification of goods.⁹⁴³ It can authorize warehouse inspectors who can enter and inspect warehouse premises and stored goods for ensuring the warehouse operator's compliance with the provisions of the WRA and its implementing regulations.⁹⁴⁴

Additional duties of the warehouse operators are determined in the Warehouse Receipts Regulations, which require them to inform the Board on a monthly basis of the warehouse operations (Section 23), and to inspect, grade and weigh the goods received for storage (Section 44).

Contractual obligations of the parties and risk allocation. Part VI of the WRA establishes the general rights and obligations of warehouse operators. Warehouse operators are obligated to deliver the stored goods upon the receipt holder's or the depositor's demand after one of them has paid for the warehouse operator's lien on the commodities and signed the relevant documents of delivery.⁹⁴⁵

Warehouse operators have a duty to exercise reasonable care of the stored goods.⁹⁴⁶ They must store goods of different depositors or under different receipts separately, and they may commingle fungible goods of the same kind and quality only with the approval of the warehouse receipt holder or the depositor.⁹⁴⁷

The warehouse operator is generally liable to the receipt holder for damages if the goods no longer exist or if they do not correspond with the description on the receipt.⁹⁴⁸ A warehouse

operator is not liable for failure to deliver the goods, if the goods have been lawfully sold or disposed of because they were perishable or to satisfy the warehouse operator's lien.⁹⁴⁹ Warehouse operators are liable for a breach of their duty to exercise reasonable care in regard to the stored goods.⁹⁵⁰

Warehouse receipts. A warehouse receipt under the WRA means "a receipt issued by a warehouse operator in respect of storage, handling or shipment of the commodity".⁹⁵¹ Warehouse receipts can only be issued by a duly licenced warehouse operator.⁹⁵² A warehouse receipt is considered proof of the holder's propriety rights of the goods.⁹⁵³ It is printed in triplicate with each copy marked as "Certificate of Title," "Certificate of Pledge" and "Book Copy". Thus, Tanzania has instituted a system for double warehouse receipts. The certificate of title proves ownership rights in the deposited goods, while the certificate of pledge proves pecuniary interests in the deposited goods against the holder of the title certificate.⁹⁵⁴

A warehouse receipt can be issued as negotiable or non-negotiable. Under the WRA, a negotiable warehouse receipt is defined as "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", while a non-negotiable receipt shall be a "receipt on which it is stated that the goods received will be delivered to the bearer".⁹⁵⁵

Without differentiating between negotiable and non-negotiable warehouse receipts, the WRA determines specific requirements for the minimum contents of a receipt:

- the location of the warehouse where goods are stored;
- the date of issue of the receipt;
- the serial number of the receipt;

⁹⁴² Ibid., Sec. 16(2).

⁹⁴³ Ibid., Sec. 6 (1) (a) and (h).

⁹⁴⁴ Ibid., Sec. 28 et seq.

⁹⁴⁵ Ibid., Sec. 40.

⁹⁴⁶ Ibid., Sec. 51.

⁹⁴⁷ Ibid., Sec. 52 and 53.

⁹⁴⁸ Ibid., Sec. 50(1).

⁹⁴⁹ Ibid., Sec. 44.

⁹⁵⁰ Ibid., Sec. 51.

⁹⁵¹ Ibid., Sec. 3.

⁹⁵² Ibid., Sec. 31.

⁹⁵³ Ibid., Sec. 32(1).

⁹⁵⁴ Sec. 38(1)–(3), Warehouse Receipts Regulations, 2006.

⁹⁵⁵ Sec. 34(1) and 35, Warehouse Receipts Act, 2005.

- a statement whether the goods received will be delivered to the bearer, to a specified person or that specified person's order;
- a short description of the goods or of their packages;
- the registered signature of the authorized warehouse operator;
- the nature and fact of ownership of the goods, whether solely or jointly or commonly owned with others;
- a statement as to the amount of advances made and of liabilities incurred.⁹⁵⁶

The Regulations to the WRA require the receipts to contain in addition the following details:

- the name of the licenced warehouse operator;
- the grade of the warehouse;
- the licence number of the warehouse;
- the contractual relationship between the warehouse operator and the depositor of the goods;
- the identification number, if any, of each unit of the goods stored;
- policy number of the insurance of the goods and warehouse;
- the net weight and/or volume of the goods;
- the fees chargeable as lien on the stored goods;
- a statement indicating the amount of standard deterioration shrinkage or diminution in grade or quality that is agreed upon between the depositor and the warehouse operator during the term of the storage of the goods;
- an endorsement by the depositor or his or her agent acknowledging any encumbrances on the goods, which are specified on the receipt;
- grade of the goods;
- the agreed period of time that goods will be stored.⁹⁵⁷

Additional terms and conditions are permitted, provided that they are not contrary to the

WRA provisions and do not impair obligations of delivery or the duty of care.⁹⁵⁸ In the event that a required term is omitted, the warehouse operator shall be liable for any damages caused thereby.⁹⁵⁹ The WRA does not contain a provision on whether a warehouse operator can issue warehouse receipts against his or her own commodities.

The WRA does not detail form requirements for warehouse receipts, but it empowers the minister responsible for marketing of agricultural commodities to issue regulations prescribing a standard format.⁹⁶⁰ According to the Regulations, warehouse receipts shall be printed with security features prescribed by the warehouse operator and approved by the Board.⁹⁶¹ The WRA does not provide for a centralized registry for warehouse receipts.

Negotiation and transfer of warehouse receipts.

The WRA contains provisions governing the negotiation of warehouse receipts, and it empowers the minister responsible for marketing of agricultural commodities to further prescribe through regulations the procedure and limits for the negotiation of negotiable warehouse receipts.⁹⁶² A negotiable warehouse receipt to the order of a named person may be negotiated by endorsement and delivery after endorsement in blank to the bearer or a specific person.⁹⁶³ After a negotiable warehouse receipt has been endorsed to a specified person, it can be negotiated to a specified person by endorsement of the endorsee and delivery.⁹⁶⁴ Endorsements occur according to the Bill of Exchange Act.⁹⁶⁵

Due negotiation involves the transfer of the following rights: the title to the goods that the negotiating person and depositor could convey, the direct obligation of the warehouse operator to hold possession of the goods according to the terms of the warehouse receipt and all rights

⁹⁵⁸ Sec. 33(3), Warehouse Receipts Act, 2005.

⁹⁵⁹ Ibid., Sec. 33(2).

⁹⁶⁰ Ibid., Sec. 79(1)(b).

⁹⁶¹ Sec. 38(1) and 40(b), Warehouse Receipts Regulations, 2006.

⁹⁶² See Part VII and Sec. 34(3), Warehouse Receipts Act, 2005.

⁹⁶³ Sec. 62, Warehouse Receipts Act, 2005.

⁹⁶⁴ Ibid., Sec. 63(1) and (2).

⁹⁶⁵ Sec. 37(2), Warehouse Receipts Regulations, 2006.

⁹⁵⁶ Ibid., Sec. 33(1).

⁹⁵⁷ Sec. 37(1), Warehouse Receipts Regulations, 2006.

accrued under the law of agency and estoppels, including the right to goods delivered to the warehouse operator after the warehouse receipt is delivered.⁹⁶⁶

Settlement and release of stored goods.

Generally, a warehouse operator delivers the stored commodities upon demand of the holder of the warehouse receipt or depositor after one of them offers to pay the warehouse operator's lien, and the relevant delivery documents are signed.⁹⁶⁷ The warehouse operator delivers only after being satisfied that the recipient of the commodities is lawfully entitled to their possession and, according to the terms of the receipt, to their delivery.⁹⁶⁸

The Regulations additionally require that both certificate of title and certificate of pledge must be presented for delivery.⁹⁶⁹ The WRA determines several exceptions where a warehouse operator shall not deliver, in particular if he or she learns that the person requesting delivery is not legally entitled to the goods (Section 43) or if the goods have been lawfully sold or disposed of because they were perishable or to satisfy the warehouse operator's lien (Section 44). The WRA (Section 54) establishes the warehouse operator's lien on the deposited goods or the proceeds thereof for due charges and expenses related to warehousing.

In the event of partial delivery of the goods underlying a negotiable warehouse receipt, a warehouse operator must either take and cancel the initial receipt and issue a new receipt for the remaining goods or conspicuously place a statement on the original receipt of what goods and packages have been delivered.⁹⁷⁰

Execution and priority of obligations. The WRA does not contain provisions on the priority ranking of receipt holders *vis-à-vis* other creditors. Neither does it contain provisions if the warehouse operator cannot deliver the goods or becomes insolvent. The WRA does not provide for a facilitated execution in case of debtor

default, but the procedural rules of the general legislation apply to receipt holders. In cases in which more than one person claims title or possession of the same goods, the warehouse operator shall not deliver the goods but require all claimants to interplead in accordance with the Tanzanian Civil Procedure Code Act of 1966.⁹⁷¹

Offences and penalties. Possible offenses and their associated penalties are outlined in Part VIII of the WRA. Amongst others, warehouse operators are liable for fines and/or imprisonment for issuing a receipt knowing that the goods have not been received or are not under the warehouse operator's control; receipts containing false statements; duplicate receipts not marked as such; and a negotiable receipt for stored goods owned by the warehouse operator without stating the ownership.⁹⁷² A depositor is subject to fines or imprisonment for depositing goods subject to a lien or mortgage or to which he has no title a negotiable receipt and for negotiating a negotiable receipt for value with the intent to deceive and without disclosing the mortgage or lack of title.⁹⁷³

In addition, in case of a violation of the WRA, the Board may revoke, suspend or deny a warehouse licence.⁹⁷⁴ In case of licence suspension or revocation, the Board shall immediately publish a notice that specifies the licence holder.⁹⁷⁵

Conclusion

Within the region, the United Republic of Tanzania was one of the first countries to introduce warehouse receipt legislation, and it has served as an instructive model for other African countries, such as Uganda and Zambia, when designing their legislation.

Tanzania's warehouse receipt system is governed by one comprehensive law with subordinate regulations, developed with international assistance, particularly IFAD. It combines the basic provisions for the regulation and operation

⁹⁶⁶ Sec. 66, Warehouse Receipts Act, 2005.

⁹⁶⁷ Ibid., Sec. 40.

⁹⁶⁸ Ibid., Sec. 42.

⁹⁶⁹ Sec. 41(1), Warehouse Receipts Regulations, 2006.

⁹⁷⁰ Sec. 46(1), Warehouse Receipts Act, 2005.

⁹⁷¹ Ibid., Sec. 49(1).

⁹⁷² Ibid., Sec. 71–74.

⁹⁷³ Ibid., Sec. 76.

⁹⁷⁴ Ibid., Sec. 6(1)(m) and 26.

⁹⁷⁵ Sec. 17(7), Warehouse Receipts Regulations, 2006.

of warehouses, as well as for warehouse receipts. Subsequent acts complement the WRA for specific commodities, namely the Cashewnut Industry Act of 2009 and the Cereals and Other Produce Act of 2009.

The WRA covers most of the key elements of warehouse receipt legislation. Its scope of application is broad – it includes all agricultural commodities – and it contains an opening clause for the competent minister to further extend its scope to include other goods. It defines the institutional framework, establishing the Tanzania Warehouse Licensing Board as the licensing and oversight body with broad representation of public- and private-sector stakeholders and vesting the overall regulatory power in the minister responsible for marketing of agricultural commodities.

Warehouse regulation and operation are addressed in detail in the WRA, and it clearly sets out the licensing criteria and procedures, which are further detailed in the Regulations. Different from many other countries with a common law legal tradition, Tanzania provides not for single but double receipts, which consist of a certificate of title and a certificate of pledge. The receipts may be negotiable, and the WRA determines basic rules for their negotiation and transfer. Detering penalties are set out in the WRA, complemented by the possibility to revoke or suspend a warehouse licence.

To guarantee warehouse performance, the WRA requires that a warehouse operator applying for a licence executes and files with the Board a bond sufficient to secure performance of his or her obligations under the WRA. In addition, the warehouse operator must obtain a certificate of insurance evidencing an effective insurance policy for the commodities against loss by fire, theft, burglary, arson or any other risk that the Board prescribes. It does not, however, establish an indemnity or guarantee fund. Importantly, the system is complemented through the services of Savings and Credit Cooperative Societies (SACCOs), though they are not referred to in the WRA. At the beginning of the harvesting season, SACCO managers submit a loan application to

a bank, and a farmer can use the warehouse receipt as collateral to obtain a loan from the SACCO for up to 70 percent of the deposited stock's value.⁹⁷⁶ SACCOs act as mediators between farmers and commercial banks and mitigate the risk for the latter when granting agricultural loans.

However, some elements that would protect the lenders' interest are not currently included in Tanzania's legal framework for warehouse receipts. The WRA does not contain provisions facilitating the execution in case of debtor default, such as out-of-court procedures, so creditors must follow regular court procedures. It also does not privilege receipt holders in the priority ranking *vis-à-vis* other creditors. And there is no centralized registry for warehouse receipts, which could support system transparency and help to protect against fraud.

Still, the introduction of the warehouse receipt system has had considerable success in addressing some of the problems facing the smallholder farmers who dominate agriculture in Tanzania. In particular, the system has begun to improve problems related to poor storage facilities and limited access to markets and credit. The implementation of the warehouse receipt system has increased the access of smallholder farmers to markets,⁹⁷⁷ *inter alia* through bulking their goods through producers' organizations that finance and sell on their behalf.⁹⁷⁸ The farmers are now able to store their agricultural produce after harvest and receive finance from commercial banks through mediation of SACCOs until market prices rise again, leading to an increase of farmgate prices up to 300 percent.⁹⁷⁹ SACCOs play an important role in the scheme as they provide a guarantee as mediators for commercial banks to provide agricultural credit. As of 2010, the Warehouse Licensing Board had licenced 34 warehouses.⁹⁸⁰

⁹⁷⁶ IFAD, 2011, p. 134.

⁹⁷⁷ See World Bank, 2011.

⁹⁷⁸ UNCTAD, 2009, p. 26.

⁹⁷⁹ IFAD, 2012, p. 2.

⁹⁸⁰ USAID, 2010, p. 100.

Evidence shows that the implementation of the warehouse receipt system has contributed to an increase in the production of cashew nuts and coffee.⁹⁸¹ Tanzania introduced the warehouse receipt system in both food and cash crops,⁹⁸² but the system developed first for export crops, rather than food crops, which are more controversial and politically sensitive.⁹⁸³ In 2009, combined annual lending against raw cashew nuts and coffee was in excess of USD 50 million.⁹⁸⁴ Commercial banks, community and regional banks, SACCOs and Rural Financial Support NGOs grant credit to individual farmers, farmers groups, primary cooperative societies and private traders.⁹⁸⁵ Between 25 percent and 30 percent of Tanzania's coffee exports reportedly pass through the warehouse receipt system, and much of this coffee is supplied by producers' organizations that bulk goods for financing and sale on behalf of their members.⁹⁸⁶ A considerable volume of receipts has been issued and financed by banks, yet they prefer high-value crops such as cashews.⁹⁸⁷ In these sectors there are specific regulatory bodies such as the Cashew Board and the Cereals and Other Produce Board that support the Warehouse Licensing Board.⁹⁸⁸

To move forward, commentators have noted that Tanzania would need to strengthen its regulatory regime for warehouses to ensure that the same successful system for export crops – such as coffee, cotton and cashews – can be applied to staple grains.⁹⁸⁹ Recent projects in Tanzania – such as the Grain Farmers' Access to Warehouse Inventory Credit in Tanzania supported by the CFC – aim to support the development of the warehouse receipt system in the grain sector.⁹⁹⁰ The WRA is applicable to and constitutes the

Box 15: At a glance – Tanzania's warehouse receipts legislation

Key legislation: Warehouse Receipts Act of 2005.

Scope: All agricultural commodities and such other goods as the minister responsible for marketing of agricultural commodities may declare by order published in the gazette.

Institutional structure: The Act established the Tanzania Warehouse Licensing Board as a corporate body whose functions include the licensing of warehouses, warehouse operators and warehouse inspectors and approving negotiable warehouse receipts books.

Authorization and oversight of warehouses: Any person wishing to conduct a warehouse business shall apply to the Board for a warehouse licence.

Guarantees: Tanzania requires a warehouse operator to execute and file with the Board a bond sufficient to secure performance of his or her obligations, in addition to a certificate of insurance evidencing an effective insurance policy for the commodities.

Contractual rights and obligations of the parties and risk allocation: The Act establishes the general rights and obligations of warehouse operators.

Warehouse receipts: Tanzania has instituted a system for double warehouse receipts, printed in triplicate with each one copy marked as "Certificate of Title", "Certificate of Pledge" and "Book Copy".

Transferability of warehouse receipts: The Act contains provisions governing the negotiation of warehouse receipts. It does not provide for a centralized registry for warehouse receipts.

Settlement and release of stored goods: Generally, a warehouse operator shall deliver the stored commodities upon demand of the holder of the warehouse receipt or depositor after one of them offers to pay the warehouse operator's lien and sign the relevant delivery documents.

Execution and priority of obligations: The Act does not provide for a facilitated execution in case of debtor default but leaves that the general procedural rules apply to receipt holders.

Offenses and penalties: Under the Act, warehouse operators are liable for set fines and/or imprisonment for listed violations.

⁹⁸¹ Bank of Tanzania, 2011, p. 1.

⁹⁸² Ministry of Industry, Trade and Marketing Tanzania, 2007, p. 2.

⁹⁸³ UNCTAD, 2009, pp. 2, 4.

⁹⁸⁴ Ibid., p. 1.

⁹⁸⁵ Ministry of Industry, Trade and Marketing Tanzania, 2007, p. 17.

⁹⁸⁶ Ibid., p. 26.

⁹⁸⁷ CFC, 2012, p. 21.

⁹⁸⁸ See UNCTAD, 2009, p. 29.

⁹⁸⁹ Onumah, 2010, p. 1.

⁹⁹⁰ Tanzania Warehouse Licensing Board, Grain Farmer's Access to Warehouse Inventory Credit in Tanzania (CFC/FIGG/38/FA); CFC, 2012, pp. 20, 21.

necessary basis for grain warehouse receipts. Another important challenge for implementing the system in Tanzania lies in ensuring that the Warehouse Licensing Board can enforce negative decisions, such as revoking licences of warehouse operators who are politically well connected.⁹⁹¹

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The Cereals and Other Produce Act, No. 19. 2009. The United Republic of Tanzania. An Act to make provisions for the establishment of the Cereals and Other Produce Board, for promotion and development of cereals and other agricultural produce and to provide for other related matters.

The Judicature and Application of Laws Act, Chapter 358. 1961. An Act to declare the jurisdiction of the High Court and courts subordinate thereto and to apply and recognise certain laws.

The Warehouse Receipts Act, No. 10. 2005. An Act to provide for the establishment of a regulatory framework for warehouse receipts and to provide for licensing procedures of warehouses and for other related matters.

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⁹⁹¹ UNCTAD, 2009, p. 38.

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Turkey

Introduction to the agricultural sector and legal framework

Over the last two decades, Turkey has developed into one of the world's major agricultural producers, and as of 2012 it was ranked seventh. A significant portion of this agricultural-sector growth is geared towards export markets and accordingly, the value of agricultural exports more than doubled during the period between 2000 and 2010.⁹⁹² Despite steady growth of the agricultural sector, rapid growth in the industrial and service sectors resulted in the decline of agriculture's share of the national GDP; similar results are seen in agriculture's reduced share in exports and employment.⁹⁹³

However, the agricultural sector still remains an important sector as of 2010 – contributing 9.4 percent of Turkey's national GDP and employing approximately 25 percent of the labour force that year.⁹⁹⁴ Additionally, growth in the agricultural sector has allowed Turkey to maintain self-sufficiency for foodstuffs for a population that has grown by 20 percent between 1995 and 2010.⁹⁹⁵ Turkey's national agricultural production continues to be dominated by crop production. The minority share contributed by livestock has declined from 32 percent in 1995 to 26 percent in 2010.⁹⁹⁶ Some of the main crops Turkey produces include grain crops such as wheat, barley and corn, as well as hazelnuts, pulses, fruit and vegetables.⁹⁹⁷

Turkey's agricultural sector still faces several challenges to productivity despite its strong production and growth.⁹⁹⁸ At the broad level, Turkey's agricultural productivity is influenced by its large number of smallholder farmers, inadequate rural physical infrastructure and a high illiteracy rate among farmers.⁹⁹⁹ As of 2010, there were approximately 3.1 million farms in

Turkey; more than 90 percent of them farmed fewer than 20 hectares of land and more than 66 percent of them farmed fewer than 5 hectares of land.¹⁰⁰⁰ Commentators have noted that inheritance laws have, over time, contributed to the fragmentation of agricultural land, thereby reducing the possibility of mechanization and process efficiency gains.¹⁰⁰¹ Related to agricultural finance, one major challenge has been that banks have not trusted the public warehouses in Turkey; as a result, banks have sometimes resorted to creating their own warehouses to store and monitor pledged collateral.¹⁰⁰²

It is important to note that Turkey implemented major reforms in its agriculture sector during the 2000s in response to broad economic instability in the previous decade and its desire to align its policies and laws with those of the European Union in the hopes of eventual membership. Thus in 2001, as a condition for receiving International Monetary Fund (IMF) assistance, Turkey initiated reform through the 2001–2008 Agricultural Reform Implementation Project, with technical and financial support from the World Bank. This project began the reorientation of state policies with respect to subsidies and output intervention so as to bring policies in line with those of the European Union.¹⁰⁰³ Policy changes were put into the 2006 Law on Agriculture, which outlines broad priority areas for action by the Ministry of Food, Agriculture and Livestock. These priority areas include agricultural production efficiency; the provision of an adequate and reliable food supply; the development of infrastructure and agricultural enterprises; the socio-economic development of rural areas; and the development and rational use of land and water resources.¹⁰⁰⁴

Policy development has continued, and broad agricultural policies are outlined in four-year strategic plans, with the current Strategic Plan for 2013–2017. It contains 17 broad objectives, such as raising rural living standards, improving the efficiency and quality of production methods

⁹⁹² See OECD, 2012, p. 211.

⁹⁹³ Between 1995 and 2010, agriculture's share in GDP declined from 11.9% to 9.4%, exports from 19.9% to 10.4% and employment from 44.1% to 25.1%. OECD, 2012, p. 211.

⁹⁹⁴ See *ibid.*

⁹⁹⁵ Population estimates for Turkey were 62 million in 1995 and 74 million in 2010. *Ibid.*

⁹⁹⁶ *Ibid.*

⁹⁹⁷ OECD, 2011, pp. 25–30.

⁹⁹⁸ See OECD, 2012, p. 211.

⁹⁹⁹ See *ibid.*; OECD, 2011, p. 58.

¹⁰⁰⁰ OECD, 2011, pp. 20, 21.

¹⁰⁰¹ *Ibid.*, pp. 23, 24.

¹⁰⁰² See FAO, 2009, pp. 22, 23.

¹⁰⁰³ OECD, 2011, p. 46.

¹⁰⁰⁴ See Art. 6, Law on Agriculture, 2006.

and improving agricultural infrastructure.¹⁰⁰⁵ The Ministry of Food, Agriculture and Livestock is tasked with the development of the agricultural sector and conducting agricultural policy research to establish food security and rural development.¹⁰⁰⁶

Turkey is a democratic republic governed under its 1982 Constitution.¹⁰⁰⁷ Notably, under the Constitution (Article 44), the “State shall take the necessary measures to maintain and develop efficient land cultivation.” Turkey operates under a civil law system, based on European legal systems.¹⁰⁰⁸ The current version of its Civil Code was passed in 2001, updating the 1926 Civil Code that was modelled after the Swiss Civil Code.¹⁰⁰⁹

Warehouse receipt legislation

Warehouse receipt finance has existed in Turkey since the 1800s and was common in the tobacco and hazelnut sectors; however, several aspects of the framework needed further development in order for expanded use, particularly in the grain sector.¹⁰¹⁰ Steps towards the establishment of a modern warehouse receipt system in Turkey began as a 1998–2003 pilot project under the World Bank to support the development of market systems for cotton and grain.¹⁰¹¹

The 2005 Law on Licenced Warehousing institutionalized a formal warehouse receipt system. This law provides an overarching framework for the warehouse receipt system, and several detailed commodity-specific regulations have been promulgated under it.¹⁰¹² Commodity-specific regulations were

consolidated under one unified regulatory framework in 2013.¹⁰¹³ Also relevant, the Regulation on Electronic Warehouse Receipts was promulgated in 2011, pursuant to Article 15 of the Law on Licenced Warehousing. In addition to the warehouse-specific laws and regulations, the Turkish Commercial Code, the Turkish Civil Code and the Turkish Criminal Code form the relevant general legal framework.

Purpose and scope. The purpose of the Law on Licenced Warehousing is to facilitate trade in agricultural products through a regulated system for warehouses that store agricultural products. Agricultural products are broadly defined to include cereals, pulses, cotton, tobacco, nuts, oilseeds, vegetable oils and other basic and processed products that can be standardized, such as sugar.¹⁰¹⁴ The scope of the Law on Licenced Warehousing encompasses licensing requirements for warehouses that store agricultural products, obligations of warehouse operators, a system for receipts and penalties for non-compliance.

Institutional structure. The Turkish Ministry of Science, Industry and Technology (hereinafter, “the Ministry”; formerly the Ministry of Industry and Trade¹⁰¹⁵) is the designated institution for licensing warehouses and overseeing of the warehouse receipts system.¹⁰¹⁶ The Ministry has broad responsibilities for implementing policies related to industrial sectors, technical standards and measurement, product safety and economic development, as well as any additional responsibilities specified by legislation (such as the Law on Licenced Warehousing Law).¹⁰¹⁷

Licensing and oversight of warehouses. Under the Law on Licenced Warehousing of 2005 (Article 8), warehouse operators must obtain a warehouse storage licence from the Ministry and publish the licence in the Trade Registry Gazette

¹⁰⁰⁵ Ministry of Food, Agriculture, and Livestock, 2013.

¹⁰⁰⁶ See Art. 2, Decree on Duties of the Ministry of Food, Agriculture, and Livestock, 2011.

¹⁰⁰⁷ See Arts. 1 and 2, Constitution of Turkey, 1982; Ministry of Foreign Affairs of the Republic of Turkey, 2013.

¹⁰⁰⁸ The Swiss civil code provides a basis for the Turkish civil law system.

¹⁰⁰⁹ Civil Code of Turkey, 2001. See also, Blocher, 2006.

¹⁰¹⁰ See FAO, 2009, pp. 22, 23, 36, 43, 44.

¹⁰¹¹ See World Bank, 2003. See also, Varangis & Larson, 1996, p. 128.

¹⁰¹² Such regulations include Regulation on licenced hazelnut warehouses, adopted 2006, latest amendment 2011; Regulation on licenced grain, legume and oilseed warehouses, adopted 2005, latest amendment 2011; Regulation on licenced cotton warehouses, adopted 2005, latest amendment 2011; Regulation on licenced olive warehouses, adopted 2010, latest amendment 2011; Regulation on licenced olive oil warehouses, adopted 2010, latest amendment 2011.

¹⁰¹³ See Art. 50, Regulation of Agricultural Products Licenced Warehousing, 2013.

¹⁰¹⁴ See Arts. 1, 2 and 3(d), Law on Licenced Warehousing, 2005.

¹⁰¹⁵ Republic of Turkey Ministry of Science, Industry, and Technology, 2013.

¹⁰¹⁶ See Arts. 3(a) and 8, Law on Licenced Warehousing, 2005.

¹⁰¹⁷ See Art. 2, Decree on the Organization and Functions of the Ministry of Science, Industry and Technology, 2011.

of Turkey. All warehouses operated by the warehouse operator must be run under the same licence, which is not transferable. The Ministry may issue a licence for storing two or more types of agricultural products. Information regarding the types of products the warehouse operator can store and the maximum storage capacity of each of these products should be specified on the licence documents. Licences are valid for two years.¹⁰¹⁸

To obtain a licence, warehouse operators must satisfy the general requirements for warehousing, the specific requirements for the type of product they will be storing and provide a set of documents to the Ministry. Warehouse operators that plan on storing agricultural products must comply with the following licensing requirements: warehouses must fulfil all conditions specified by the Ministry; maintain adequate weighing procedures and instruments; fulfil contractual obligations with the stock market and authorized classifiers; maintain required information technology and control infrastructure; comply with record-keeping requirements, as well as guarantee fund and insurance requirements; comply with set minimum capital levels; and maintain necessary warehouse staff.¹⁰¹⁹

Warehouse operators must renew their licence to reflect any changes in the activities their warehouses carry out, in the storage capacity or in their title. This type of renewal requires warehouse operators to go through the procedures as if they were applying for a completely new licence.¹⁰²⁰ Warehouses that intend to operate as “authorized classifiers” of goods must obtain a separate licence to carry out those activities.¹⁰²¹ To ensure compliance, the Ministry has explicit authority to inspect the records and premises of warehouses, and warehouses may not bar entry to inspectors of

the Ministry or their designated technicians.¹⁰²² If the Ministry decides, from evaluation, that the storage warehouse is not appropriate for the storage of products, it may refuse to grant the warehouse’s application for a licence or renewal.¹⁰²³

Licensed warehouse operators have several explicit obligations stipulated by Article 18 of the Law on Licensed Warehousing. Licensed warehouses must take the necessary measures to preserve and maintain the conditions of the licence and immediately notify the Ministry in case of changes; ensure regular flow of information to the stock exchange regarding receipts and allow receipt exchanges to inspect records at the request of the stock market; keep records as prescribed by specific and general laws and regulations; comply with auditing and information requests from the Ministry; and others. Warehouses may not trade in the type of products stored for depositors.¹⁰²⁴ The Law does not contain specific provisions related to whether a warehouse can issue receipts for products that it owns.

Warehouse operators must keep full and accurate records of products entering and leaving the warehouse, as well as warehouse licensed product certificates notarized on the stock book. Electronic records of the books, insurance policies, product certificates that have been cancelled, storage records and all other records and documents should be kept by the warehouse operator for ten years. At the end of the financial year, the Ministry may oblige the licensed warehouse operators to show their financial statement, even if already inspected by a third-party.¹⁰²⁵ Electronic warehouse receipts must be recorded and processed through the authorized Electronic Registry Agency.¹⁰²⁶

¹⁰¹⁸ Art. 11(3), Regulation of Agricultural Products Licensed Warehousing, 2013.

¹⁰¹⁹ Ibid., Art. 8.

¹⁰²⁰ Ibid., Arts. 11 and 12.

¹⁰²¹ An “authorized classifier” refers to real and legal persons who operate laboratories to analyse and classify the nature and characteristics of agricultural products stored in warehouses, as well as to issue documentation detailing the classifications. See Art. 3(l), Law on Licensed Warehousing, 2005.

¹⁰²² See Art. 44, Regulation of Agricultural Products Licensed Warehousing, 2013.

¹⁰²³ Art. 9, Law on Licensed Warehousing, 2005.

¹⁰²⁴ Art. 35, Regulation of Agricultural Products Licensed Warehousing, 2013.

¹⁰²⁵ Art. 23, Law on Licensed Warehousing Law, 2005.

¹⁰²⁶ Merkezi Kayıt Kuruluşu A.Ş. has been authorized as the “Electronic Registry Agency” for record-keeping of the electronic warehouse receipts by the Regulation on Electronic Warehouse Receipts.

Warehouse operators must further enter into a contractual agreement with the stock exchange to ensure the safe trading of warehouse receipts. Under the contractual agreements, the warehouse operators and the stock exchanges must come to a consensus on warehouse receipt issues, such as the movement, control, traceability, cancellation and information exchange of warehouse receipts, as well as setting a quota for the warehouse receipts in the stock exchange. For this agreement and any amendments to it to be effective, the Ministry must give its approval.¹⁰²⁷

Performance guarantees. Licenced warehouses must participate in insurance schemes for the goods stored in the warehouses.¹⁰²⁸ Stored goods must be insured against theft, fire, smoke, explosion, earthquake, internal flooding, flood, strikes, lockouts, riots, terrorism, storms, snow, lightning, landslide and vehicle damage.¹⁰²⁹ Warehouse operators are required to report damage of stored goods to the insurance company within five days of the damage being determined, absent a valid excuse. The insurance company must pay depositors the appropriate amount within ten business days of receiving the documentation for damage.¹⁰³⁰

In addition, warehouses must participate in the compensation fund scheme, regulated in detail under the Licenced Warehouses Compensation Fund Regulation. The Fund generates revenue from service fees charged to licenced warehouse operators for the calendar year; 10 percent of the product registration fees for the purchase and sale of securities conducted through trading at stock exchanges; 0.0005 percent of the cost of products traded through trading securities; income collection and interest; and grants, contributions and other sources. The Fund compensates for losses to depositors, as well as expenses related to implementing the Law on Licenced Warehousing, the development of licenced warehousing activities, training and

supervision, administration and carrying out the tasks assigned by this Act.¹⁰³¹

Contractual rights and obligations of the parties and risk allocation. The warehouse operator must store and immediately deliver stored goods upon the request of the depositor, unless there is a legally valid excuse for delay.¹⁰³² According to Article 18 of the Law on Licenced Warehousing, licenced warehouses must take in agricultural products without discrimination; take whatever action necessary to protect the product; unless otherwise stated in the relevant legislation, issue certificates for the product stored; at the request of the depositor, cancel the delivery of the product and product certificates; and comply with the warehouse's posted storage fee schedule. Warehouses are permitted to commingle goods of the same type and quality, and discounts can be applied in cases of slight differences of quality.¹⁰³³

Specific provisions on the liability for loss or damage of stored goods are not found in the warehouse legislation.

Warehouse receipts. Warehouse operators must either issue "product certificates" (i.e. "warehouse receipts") or receipt-like documents for goods accepted into storage at the warehouse.¹⁰³⁴ Article 3(i) of the Law on Licenced Warehousing of 2005 defines product certificates (*Ürün senedi*) as documents issued by licenced warehouse operators in exchange for agricultural products that are delivered to their warehouses. These warehouse receipts are documents of title under Turkish commercial law.¹⁰³⁵ The documents represent ownership of products and can be pledged as security (or a guarantee). There is currently no provision for a central registry for paper receipts, but there is for electronic receipts. The receipt may or may not be endorsed, as printed, unless otherwise

¹⁰²⁷ Art. 22, Law on Licenced Warehousing, 2005.

¹⁰²⁸ Ibid., Art. 6.

¹⁰²⁹ Art. 15, Regulation of Agricultural Products Licenced Warehousing, 2013.

¹⁰³⁰ Art. 6, Law on Licenced Warehousing, 2005.

¹⁰³¹ Ibid., Art. 24.

¹⁰³² Ibid., Art. 21.

¹⁰³³ Ibid., Art. 20.

¹⁰³⁴ Warehouse receipt-like documents include weighting receipts, ownership certifications or any other documentation demonstrating the amount of goods and ownership of the goods received and stored at the warehouse. See *ibid.*, Art. 15.

¹⁰³⁵ See Ansay & Schneider, 2001, p. 77-78.

specified in provisions of the Turkish Commercial Code.

Warehouse receipt-like documents are alternatives to warehouse receipts that document information regarding the stored goods, such as their type, class, amount, quality and ownership. But they are not securities.¹⁰³⁶ Only designated personnel declared by the warehouse operator in the Trade Registry is authorized to sign and issue warehouse receipts. Warehouse receipts can now be issued in electronic form as e-warehouse receipts.¹⁰³⁷ E-warehouse receipts are subject to further regulation under the Regulation on Electronic Warehouse Receipts of 2011.¹⁰³⁸

Warehouse receipts must contain the following required information:

- “Product Certificate” heading;
- licenced warehouse name, licence number and address;
- the product stored;
- the date and serial number of the certificate;
- an indication whether the certificate is negotiable or not negotiable;
- a statement of liens;
- the name of the depositor;
- the deposit date and maturity date;
- a description of the storage fees due;
- a statement that the analysis and classification process was done by an authorized classifier and that products are insured against the risks specified in Article 15;
- the date of and analysis results for classification of the product weight;
- revenue for the process space;
- the signature of the authorized person or persons at the warehouse;

- any other information determined by the Ministry according to the specific type of product stored.¹⁰³⁹

Transferability of warehouse receipts. The Law on Licenced Warehousing of 2005 does not contained provisions regulating the transferability of warehouse receipts. However, the Law defines receipts as documents that represent ownership of stored agricultural products and can be pledged as security (or guarantee). The document may or may not be endorsed, as printed, unless otherwise specified in provisions of the Turkish Commercial Code.¹⁰⁴⁰ The Turkish Commercial Code provides the legal framework for endorsing and transferring negotiable instruments, such as warehouse receipts.¹⁰⁴¹

As noted above, warehouse operators enter into a contractual agreement with the stock exchange to ensure the safe trading of warehouse receipts. They agree on the movement of warehouse receipts and a quota for the warehouse receipts in the stock exchange.¹⁰⁴²

Settlement and release of stored goods.

Stored goods are released from the warehouse where the deposit was made when the warehouse receipt is presented.¹⁰⁴³ There are separate procedures outlined by regulations for depositors to request that fungible goods be released from a different location. Unless there is a legally valid excuse for delay, the warehouse operator must immediately deliver stored goods upon the request of the depositor. When the delivery of goods occurs, the warehouse operator must take back the receipt and cancel it. If the depositor requests a portion of the stored goods to be released, the warehouse operator must cancel the original receipt and issue a new one for the remainder of the goods stored in the warehouse.¹⁰⁴⁴ The warehouse operator is authorized to refuse the release of stored

¹⁰³⁶ Art. 15, Law on Licenced Warehousing, 2005.

¹⁰³⁷ Ibid., Art. 16.

¹⁰³⁸ The Regulation on Electronic Warehouse Receipts was promulgated pursuant to Article 15 of the Law on Licenced Warehousing, 2005.

¹⁰³⁹ Art. 22, Regulation of Agricultural Products Licenced Warehousing, 2013.

¹⁰⁴⁰ See *ibid.*

¹⁰⁴¹ See Art. 681 et seq., Turkish Commercial Code.

¹⁰⁴² *Ibid.*

¹⁰⁴³ Art. 21, Law on Licenced Warehousing, 2005.

¹⁰⁴⁴ *Ibid.*

goods if the depositor has failed to pay for their storage.¹⁰⁴⁵

Execution and priority of obligation. The Law on Licenced Warehousing does not contain provisions related to execution and priority of obligations related to receipts. One of the major shortcomings of the Turkish legal framework for warehouse receipts is that there is no priority position over other claimants. Commentators have noted that “title does not give a priority claim over the other (even minor) creditors of a warehouse.”¹⁰⁴⁶

Offences and penalties. The Law sets out specific offences with corresponding penalties for violations of its provisions and also refers to potential penalties under the broader Turkish legal system.¹⁰⁴⁷ The failure to keep records and documentation is punishable according to Article 67 of the Turkish Commercial Code; the failure to follow the procedures for issuing and keeping receipts is punishable by a fine of 5 000 to 25 000 Turkish liras; and fraudulent actions such as falsification, imitation, false representation, alteration or forgery could result in criminal liability in accordance with the Turkish Criminal Code.¹⁰⁴⁸

Administrative measures in the form of warnings, suspensions and cancellations of licences are provided in the legal framework for violations of the law.¹⁰⁴⁹ Upon a first minor violation of licence requirements, or a failure to follow the Ministry’s instructions, the warehouse operator is given an administrative warning with a set time period in which it is mandatory to remedy any problems.¹⁰⁵⁰ If the problem is not corrected after a warning, or if there is more serious fraud or a failure to deliver stored products, the licence may be suspended for one year. The licence is cancelled if major problems are not fixed

Box 16: At a glance – Turkey’s warehouse receipts legislation

Key legislation: 2005 Law on Licenced Warehousing.

Scope: Agricultural products, broadly defined to include cereals, pulses, cotton, tobacco, nuts, oilseeds, vegetable oils and other basic and processed products that can be standardized, such as sugar.

Institutional structure: The Turkish Ministry of Science, Industry and Technology is the designated institution for licensing warehouses and overseeing the warehouse receipts system.

Authorization and oversight of warehouses: Warehouse operators must obtain a warehouse storage licence from the Ministry and publish the licence in the Trade Registry Gazette.

Guarantees: Warehouses must participate in insurance schemes for the goods stored in the warehouses, as well as a compensation fund scheme.

Contractual rights and obligations of the parties and risk allocation: No specific provisions on the liability for lost or damaged stored goods are found in the warehouse legislation.

Warehouse receipts: “Product certificates” are documents of title under Turkish commercial law. These documents represent ownership of products and can be pledged as security or guarantee.

Transferability of warehouse receipts: There is currently no provision for a central registry for paper receipts, but there is one for electronic receipts.

Settlement and release of stored goods: Stored goods will be released from the warehouse where the deposit was made upon presentation of the warehouse receipt.

Execution and priority of obligations: The Law on Licenced Warehousing does not contain provisions related to execution and priority of obligations related to receipts.

Offences and penalties: The Law sets out specific offences with corresponding penalties for the violation of the provisions in this law, and also refers to potential penalties under the broader Turkish legal system.

¹⁰⁴⁵ Art. 18, Law on Licenced Warehousing, 2005.

¹⁰⁴⁶ See FAO, 2009, p. 27.

¹⁰⁴⁷ Relevant Turkish laws include the Commercial Code referenced in Article 34(a) and the Criminal Code referenced in Article 34(e).

¹⁰⁴⁸ Art. 34, Law on Licenced Warehousing, 2005.

¹⁰⁴⁹ See *ibid.*, Art. 28; Art. 45, Regulation of Agricultural Products Licenced Warehousing, 2013.

¹⁰⁵⁰ See Art. 45(1)(a), Regulation of Agricultural Products Licenced Warehousing, 2013.

during the one-year suspension period.¹⁰⁵¹ All administrative decisions regarding licences are published by the Ministry so as to provide notice to the public.¹⁰⁵²

Conclusion

Although there have been significant legislative developments related to agricultural warehouse receipts in the past few years, Turkey is one of the few countries in the region with a long-standing legal tradition for warehouse receipts. A legal framework for warehouse receipts has been in place since the 1800s.¹⁰⁵³ Turkey's agricultural sector is undergoing major reforms and changes in response to a wide variety of challenges and factors. These challenges include inadequate infrastructure, land fragmentation and historically, a lack of lender trust in the public warehouse system. Up until recently, banks did not trust the public warehouses in Turkey; as a result, banks have sometimes resorted to creating their own warehouses to store and monitor pledged collateral.¹⁰⁵⁴ Commentators have noted that the legal framework lacked adequate performance guarantees in general.¹⁰⁵⁵

Since 2005, Turkey has taken substantial legislative and regulatory steps towards improving its warehouse receipt system. The 2005 Law on Licenced Warehousing (and its supporting, detailed regulations promulgated in subsequent years), established a comprehensive legal framework for agricultural warehouse regulation and a system for warehouse receipts. To increase lender trust in the system, the framework provides several key elements. The oversight Ministry has broad powers of inspection to ensure compliance with warehouse obligations that are backed by a strong graduated administrative, civil and criminal penalty structure. Depositors and lenders are protected by mandatory insurance and guarantee fund requirements. And a system for electronic warehouse receipts is being implemented, and licenced warehouses are required to cooperate

closely with stock market exchanges for agricultural products.

All of these features are positive steps for increasing system transparency and accountability, but as the supporting regulations date from only 2011 and 2013, more time is needed to gauge their effectiveness. For the future, Turkey is viewed as having a very large potential for benefits derived from a successful warehouse receipt finance system because of the size of its agricultural sector in general and its grain sector in particular.¹⁰⁵⁶

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¹⁰⁵¹ See *ibid.*, Art. 45(1)(b) and (c).

¹⁰⁵² See *ibid.*, Art. 13(4).

¹⁰⁵³ FAO, 2009, p. 36.

¹⁰⁵⁴ See *ibid.*, pp. 22, 23.

¹⁰⁵⁵ *Ibid.*, p. 37.

¹⁰⁵⁶ *Ibid.*, p. 11.

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Uganda

Introduction to the agricultural sector and legal framework

Agriculture is considered the most important economic sector in Uganda. It contributes approximately 20 percent of the national GDP, accounts for about 48 percent of exports and employs over 70 percent of the economically active population.¹⁰⁵⁷ Agriculture is seen as the key determinant for poverty reduction and food security for the coming years.¹⁰⁵⁸ The top three crops produced in Uganda are plantains, cassava and sweet potatoes.¹⁰⁵⁹

Among the consistent challenges for farmers in Uganda are the lack of access to short-term credit for working capital and the lack of effective postharvest handling and storage facilities for their produce.¹⁰⁶⁰ The most recent Agriculture Sector Development Strategy and Investment Plan for 2010 to 2015 – adopted by the Ugandan Ministry of Agriculture, Animal Industry and Fisheries in 2010 – notes that most farmers store their produce after harvest for a short time in either their houses or old stores with poor conditions and management. They often sell it early in the harvest season to avoid deterioration of the product quality and the resulting lower prices. The plan states that farmers would greatly benefit from postharvest handling assistance, as well as from access to short-term finance to support the linkage between production and storage.¹⁰⁶¹ Traditionally, there was only one common warehousing practice in Uganda: tripartite collateral management agreements between a financier, a collateral manager and a warehouse owner using the agreement to receive working capital.¹⁰⁶²

Uganda is governed under the most recent 1995 Constitution, with a legal system combining common law and customary law traditions influenced by the former British

colonial power.¹⁰⁶³ The first specific legislation on a warehouse receipt system in Uganda was enacted in 2006–2007. It took roughly four years after the enactment of the legislation for the first Ugandan bank to begin offering finance agreements using warehouse receipts.¹⁰⁶⁴ With a receipt for a sufficient quantity of stored agricultural products, depositors can go to a participating bank and receive a short-duration (120 day) loan of up to 60 percent of the value of the stored goods.¹⁰⁶⁵ So far the primary users of warehouse receipts are farmer cooperatives that receive an average loan size of USD 7 000. It is estimated that currently about 70 percent of the depositors using the new warehouse system are these smallholder farmer groups. Amongst others, the World Food Programme (WFP) is buying grain through the receipts system, working closely with the Uganda Commodity Exchange (UCE).¹⁰⁶⁶

In view of the existing challenges for farmers in Uganda, the major benefits of the system so far are that the depositor can get a loan while waiting for a good price and the warehouse services themselves.¹⁰⁶⁷ The UCE expects a wide variety of warehousing options to emerge under the new warehouse legislation, e.g. that agribusinesses will provide public warehouse services such as cleaning, drying, primary processing and storage and issue negotiable warehouse receipts that farmers can use for obtaining credit or trading the underlying goods.¹⁰⁶⁸ Current challenges are achieving broad acceptance of the electronic warehouse receipt system and increasing warehouse system participation among Uganda's leading large grain traders.¹⁰⁶⁹

Warehouse receipt legislation

Uganda passed the Warehouse Receipt System Act in 2006 governing warehouses and the issuance of warehouse receipts and

¹⁰⁵⁷ FAOSTAT, 2014.

¹⁰⁵⁸ Ministry of Agriculture, Animal Industry & Fisheries Uganda, 2010, p. 1.

¹⁰⁵⁹ See FAOSTAT, 2014.

¹⁰⁶⁰ See Ministry of Agriculture, Animal Industry and Fisheries Uganda, 2010, pp. 88, 89; see also, Wamala, 2010.

¹⁰⁶¹ Ministry of Agriculture, Animal Industry & Fisheries Uganda, 2010, pp. 71-72; Wamala, 2010.

¹⁰⁶² Uganda Commodity Exchange, 2013, p. 1.

¹⁰⁶³ See Preamble, Constitution of the Republic of Uganda, 1995; and see generally, Judicature Act, 1996.

¹⁰⁶⁴ World Bank, 2010, p. 11.

¹⁰⁶⁵ Housing Finance Bank, 2011, p. 3; see also, Wamala, 2010.

¹⁰⁶⁶ Wamala, 2010.

¹⁰⁶⁷ See *ibid.*

¹⁰⁶⁸ See Uganda Commodity Exchange, 2013, p. 1.

¹⁰⁶⁹ See *ibid.*, p. 5.

promulgated the implementing subordinate Warehouse Receipt System Regulations in 2007. The Warehouse Receipt System Act (hereafter “the Act”) is organized into 11 parts that cover the following topics: the establishment of a warehouse receipt system authority and its composition and financing; warehouse licensing; the issuance of warehouse receipts; obligations of warehouse operators; negotiation and transfer of warehouse receipts; and penalties for offenses. The Warehouse Receipt System Regulations (hereafter “the Regulations”) add further detail to warehouse licensing requirements and the form of warehouse receipts.

Scope. The Act does not contain any provision on its explicit scope of application. However, it defines a warehouse receipt as “a receipt for goods issued by a warehouse operator duly licenced and bonded under this Act and includes a negotiable and non-negotiable warehouse receipt”. Goods are broadly defined as “all things which are treated as movable for the purposes of a contract of storage or bailment, including, in the case of goods to be packed, processed, substituted or otherwise transformed in the warehouse, their products, and includes documents, securities and instruments.”¹⁰⁷⁰ But the Regulations (Section 2[3]) restrict their application initially to the warehousing of agricultural commodities and state that they shall be extended to other goods by the Minister responsible for trade upon recommendation of the Uganda Warehouse Receipt System Authority.

Institutional structure. The Act established the Uganda Warehouse Receipt System Authority (hereafter “the Authority”) as the regulatory and oversight body for the warehouse receipt system. Its authority was delegated to the UCE, a non-governmental entity.¹⁰⁷¹ The main functions of the Authority are to investigate the storage, warehousing, classifying, weighing and certification of goods; to inspect all warehouses licenced under the Act; to issue,

suspend or revoke the licences for the conduct of a warehouse; to charge and collect fees for warehouse inspection and issuance of licences; to prescribe the duties of the operators of licenced warehouses with respect to their care of and responsibility for the goods stored; to provide guidelines and standards for the suitability for the proper storage of the goods; and to close the premises of a warehouse keeper without a valid licence.¹⁰⁷²

The Act (Sections 7–24) further contains detailed provisions on the internal structure, composition and financing of the Authority. Its board of directors consists of one representative from the ministry responsible for trade, the Uganda Clearing and Forwarding Agents Association, the Uganda Bankers Association, the Uganda Insurers Association, the Uganda National Chamber of Commerce and Industry, the co-operatives, the private sector and the farmers.¹⁰⁷³

Licensing and oversight of warehouses. No person in Uganda can operate a warehouse without a valid licence issued by the Authority upon application under the Act.¹⁰⁷⁴ The licensing requirements are set out by the Act and its implementing regulations. The UCE has also published detailed licensing criteria for warehouses. Section 26(3) of the Act prescribes that, before issuing a licence for the operation of a warehouse, the Authority shall satisfy itself that

- the warehouse is suitable for the proper storage of the particular goods for which a licence is applied for;
- the warehouse keeper meets the conditions for eligibility to operate a licenced warehouse;
- the warehouse keeper agrees, as a condition to the granting of the licence, to comply with and abide by all the terms of the Act and its regulations.

The Regulations further specify when a warehouse is considered “suitable” for the intended purpose. They list physical requirements that warehouses must satisfy, including being

¹⁰⁷⁰ Sec. 2, Warehouse Receipt System Act, 2006.

¹⁰⁷¹ Sec. 3 and 6, Warehouse Receipt System Act, 2006; Sec. 6, Warehouse Receipt System Regulations, 2007.

¹⁰⁷² Sec. 5, Warehouse Receipt System Act, 2006.

¹⁰⁷³ Ibid., Sec. 7.

¹⁰⁷⁴ Ibid., Sec. 25(1).

located in a year-round accessible place; being fit for storing the goods specified in the licence; being soundly constructed, fully enclosed and adequately roofed to prevent leakage and access by birds and rodents; having a well-maintained and effective drainage and sufficient clean hard standing at the warehouse entrances to minimize seepage of water and mud into the warehouse; having an even floor with repaired cracks; complying with fire prevention and control requirements of insurance policies; and having 24-hour security guards controlling access to the warehouse site and secure padlocks on warehouse doors when the warehouse is not patrolled.¹⁰⁷⁵

With respect to the warehouse keeper,¹⁰⁷⁶ the Authority takes into account whether he or she is owner, lessee or manager of the warehouse, his or her reputation, the sufficiency of his or her net assets and his or her competency in conducting the warehouse business.¹⁰⁷⁷ Another licence requirement is that the warehouse keeper provides a bond of an amount set by UCE, which ensures compliance with warehouse system rules.¹⁰⁷⁸ The warehouse keeper must also file with the Authority a certificate of insurance evidencing an effective insurance in his or her name that covers all goods in the warehouse for their full-market value against loss by fire, lightening, internal explosion, windstorm and any other disaster that the Authority decides to include.¹⁰⁷⁹

After these requirements are fulfilled and verified, the Authority can issue a licence to operate a warehouse.¹⁰⁸⁰ A warehouse may be licenced either as public or private¹⁰⁸¹ to store specific kinds of commodities for which the

warehouse is equipped and its keeper possesses the required capabilities.¹⁰⁸² The Authority can suspend or revoke any licence after a licence holder fails to comply with the warehouse law and regulations.¹⁰⁸³ Also it shall publish, from time to time, the names and addresses of persons licenced under the Act; the results of any investigations carried out by the Authority into storing, warehousing, classifying according to grade, weighing and certifying goods; and a list of all licences revoked under the Act and the reasons for revocation.¹⁰⁸⁴ Neither the Act nor its implementing Regulations contain provisions on a registry of licenced warehouses.

Inspection of warehouses happens at various stages.¹⁰⁸⁵ Prior to issuing a warehouse licence, the Authority inspects the warehouse to determine the warehouse's suitability for the storage of the particular goods for which a licence is required.¹⁰⁸⁶ Fungible goods stored in a licenced warehouse are subject to inspection and grading by a person licenced under the Act before being commingled with goods deposited by other depositors.¹⁰⁸⁷ At any time, the Authority or its appointed agent can inspect any licenced warehouse with a view to investigating its storage facilities; its classification, weighing and certification of the goods; and its overall compliance with the Act's provisions.¹⁰⁸⁸ In addition to its own personnel, the Authority shall, where it deems it necessary for fulfilling the aims of the Act, issue warehouse inspection licences to other persons, who must report irregularities immediately to the Authority.¹⁰⁸⁹

Contractual rights and obligations of the parties and risk allocation. The Act (Part VIII) outlines the basic obligations of warehouse keepers. It stipulates in Section 43 that the goods must be delivered to the person entitled to them under the warehouse receipt and details exceptions. The Regulations (Part VI) contain

¹⁰⁷⁵ Sec. 8(3) and (4) and First Schedule, Warehouse Receipt System Regulations, 2007.

¹⁰⁷⁶ A warehouse keeper is defined as "a person licenced under this Act to engage in the business of storing goods for hire, no matter whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse; and includes a person who operates a field warehouse" Sec. 2(1), Warehouse Receipt System Act, 2006.

¹⁰⁷⁷ Sec. 17(2), Warehouse Receipt System Regulations, 2007.

¹⁰⁷⁸ Sec. 28, Warehouse Receipt System Act, 2006; Sec. 25-27, Warehouse Receipt System Regulations, 2007.

¹⁰⁷⁹ See Sec. 31(1), Warehouse Receipt System Act, 2006.

¹⁰⁸⁰ Ibid., Sec. 25(1).

¹⁰⁸¹ Sec. 4, Warehouse Receipt System Regulations, 2007.

¹⁰⁸² Uganda Commodity Exchange, 2013, p. 2.

¹⁰⁸³ Sec. 34, Warehouse Receipt System Act, 2006.

¹⁰⁸⁴ Ibid., Sec. 38.

¹⁰⁸⁵ Ibid., Sec. 5(b).

¹⁰⁸⁶ Ibid., Sec. 26(2).

¹⁰⁸⁷ Ibid., Sec. 37.

¹⁰⁸⁸ Ibid., Sec. 5(c) and 67.

¹⁰⁸⁹ Sec. 18, Warehouse Receipt System Regulations, 2007.

further details on the delivery of goods. The warehouse receipt holder has to pay the due storage charges, and the warehouse keeper does not need to deliver if his or her lien has not been satisfied.¹⁰⁹⁰

The Act (Section 45) determines the warehouse keepers' duty of care for stored goods and receipts. Warehouse keepers must inspect, sample, weigh and grade commodities in line with licence conditions issued by the Authority, which require the warehouse keepers to apply typology and grading standards approved by the Uganda National Bureau of Standards.¹⁰⁹¹ Further detailed standards for the care of goods, as well as for the maintenance and safety of storage accounts and records, are contained in the Regulations (Part VII and Fifth Schedule). Goods covered by different receipts must be kept separate from each other in the warehouse, except for fungible goods, which may be commingled.¹⁰⁹²

The warehouse keeper is liable for damages or loss of the goods caused by his or her failure to exercise the care that a reasonable and careful person would exercise under similar circumstances. For damages that are not avoidable by the exercise of such care, the warehouse keeper is not liable unless otherwise agreed.¹⁰⁹³

Warehouse receipts. Under Ugandan legislation, the warehouse receipt is a document of title, and it constitutes *prima facie* evidence of the holder's claim to the goods represented on it.¹⁰⁹⁴ Only warehouse keepers licenced under the Act can issue a warehouse receipt.¹⁰⁹⁵ It may be issued as negotiable or non-negotiable.¹⁰⁹⁶ Under the Act (Section 2(1)), a negotiable receipt is defined as "a warehouse receipt in which it is stated that the goods received will be delivered to the bearer or to the order of a named person". A non-

negotiable receipt is a "warehouse receipt issued to the bearer or to the order of a specified person and marked non-negotiable on the face of it".

Warehouse keepers can also issue warehouse receipts against their own stored commodities. This must be stated in the warehouse receipt; otherwise, he or she has committed an offence and is liable for a fine or imprisonment.¹⁰⁹⁷ The requirements for minimum details and form differ for negotiable and non-negotiable warehouse receipts. For non-negotiable receipts, Section 40(3) of the Act prescribes that they must contain several minimum details:

- the name of the warehouse keeper;
- the location of the warehouse where the goods are stored;
- the date of issue of the receipt;
- the consecutive number of the receipt;
- a statement whether the goods received will be delivered to the bearer, to a specified person or to order;
- the rate of storage charges;
- a description of the goods and the goods' packages;
- the signature of the warehouse keeper;
- if the receipt is issued for goods of which the warehouse keeper is owner, either solely or jointly, the fact of such ownership;
- a statement of the amount of advances made and liabilities incurred for which the warehouse keeper claims a lien, and if the precise amount of these is, at the time of the receipt's issue, unknown to the warehouse keeper or to his or her agent, a statement of the fact that advances have been made or liabilities incurred and that the purpose of the advances and liabilities is sufficient;
- a statement if the goods are authorized by the bailor to be packed, processed, substituted or otherwise transformed while in the warehouse and a description of the type and quantity of goods to be produced when the authorized transformational activities are complete.

¹⁰⁹⁰ Sec. 43(1), Warehouse Receipt System Act, 2006; Sec. 33(3), Warehouse Receipt System Regulations, 2007.

¹⁰⁹¹ Sec. 35 (1) and (2), Warehouse Receipt System Regulations, 2007.

¹⁰⁹² Sec. 48, Warehouse Receipt System Act, 2006.

¹⁰⁹³ Ibid., Sec. 45(1).

¹⁰⁹⁴ Sec. 32(1), Warehouse Receipt System Regulations, 2007.

¹⁰⁹⁵ Sec. 39, Warehouse Receipt System Act, 2006.

¹⁰⁹⁶ See definition of "warehouse receipt" in *ibid.*, Sec. 2(1).

¹⁰⁹⁷ See *ibid.*, Sec. 40(3)(ix) and 61.

A warehouse keeper may insert additional terms and conditions in the receipt provided that they are not contrary to the Act and do not impair his or her obligations of delivery and duty of care.¹⁰⁹⁸ Section 28(1) of the Act requires that negotiable warehouse receipts should contain some additional information:

- the name of the licenced warehouse keeper;
- the designation and grade, if any, of the warehouse;
- the licence number of the warehouse;
- whether the warehouse keeper is a limited liability company;
- the relationship between the warehouse keeper and the depositor of the goods, if it is not a strictly disinterested custodianship;
- the identification number, if any, given to each unit of the goods stored;
- whether the goods are insured, and if insured the extent of the insurance, its amount and its policy number;
- the net weight of the goods.

Non-negotiable receipts do not need to be in any particular form. In contrast, a negotiable warehouse receipt must be in the standardized form provided in an annex to the Act (in paper or electronic form), and it must bear security features specified by the Authority. It can only be printed by a printer approved by the Authority and supplied exclusively by the Authority.¹⁰⁹⁹ Receipts not issued according to these provisions are not valid.¹¹⁰⁰

The Act created a central registry for warehouse receipts that is operated by the Authority, and it identifies the secretary to the Authority as its registrar.¹¹⁰¹ Any warehouse receipt issued or negotiated, or an original copy of it, shall be delivered to the registrar to register it in the central registry within 14 days of its issuance or negotiation.¹¹⁰² Likewise, the secretary of the

Authority shall be notified when any security is taken over a warehouse receipt within 14 days, and enter it against the receipt.¹¹⁰³ The registrar also records any cancellation of receipts or negotiations.¹¹⁰⁴ A registry is maintained in chronological order to document all transactions carried on at the central registry.¹¹⁰⁵

Negotiation and transfer of warehouse receipts. Part IX of the Act contains detailed provisions governing the negotiation of warehouse receipts. The negotiation of a negotiable warehouse receipt to the order of a named person takes place by his or her endorsement on its delivery and the registration with the central registry. The negotiation of a negotiable warehouse receipt after it has been endorsed to a specified person takes place by endorsement by the endorsee as well as delivery and registration in the central registry. The receipt is considered as duly negotiated when a person purchases it for value in good faith without any notice of a defect in it or claim to it by someone else.¹¹⁰⁶

Due negotiation entails the transfer of the warehouse receipt title, the title to the underlying goods, all rights accruing under the law of agency or estoppels and the obligation of the warehouse keeper to hold or deliver the goods according to the terms of the receipt. No outside or judicial lien may attach to goods represented by a negotiable warehouse receipt while that receipt is outstanding. However, a warehouse receipt confers no rights *vis-à-vis* a person who had a prior legal interest or perfected security interest in the underlying goods before the receipt was issued and who neither delivered the goods nor consented to the issuance of the receipt.¹¹⁰⁷

Settlement and release of stored goods.

Warehouses shall release stored goods upon presentation of a valid warehouse receipt by the holder to the person entitled under the receipt. However, there are several exceptions when the warehouse keeper does not need to deliver,

¹⁰⁹⁸ Ibid., Sec. 40(7).

¹⁰⁹⁹ Ibid., Sec. 40(1) and (2); Sec. 28(2), Warehouse Receipt System Regulations, 2007.

¹¹⁰⁰ Sec. 31, Warehouse Receipt System Regulations, 2007.

¹¹⁰¹ Sec. 42(1) and (2), Warehouse Receipt System Act, 2006.

¹¹⁰² Ibid., Sec. 42(3) and (4).

¹¹⁰³ Sec. 48(1), Warehouse Receipt System Regulations, 2007.

¹¹⁰⁴ Sec. 42(5), Warehouse Receipt System Act, 2006.

¹¹⁰⁵ Ibid., Sec. 42 (6).

¹¹⁰⁶ Ibid., Sec. 52(1)–(3).

¹¹⁰⁷ Ibid., Sec. 54(1)–(3).

namely: he or she establishes rightful delivery to a different holder; the warehouse keeper's lien has not been satisfied; there is damage to the goods that the keeper is not liable for; a previous sale or other disposition of the goods has taken place to lawfully enforce a lien or the warehouse keeper lawfully terminates storage; or if any other lawful defence of the warehouse keeper applies.¹¹⁰⁸

When the storage period specified in the receipt is over or after 30 days' notice if no storage period is stated, a warehouse owner can notify the owner of the stored goods that storage payment is due and the goods must be released.¹¹⁰⁹ The warehouse owner has a warehouse lien over deposited goods in the amount of storage charges that are due.¹¹¹⁰

Execution and priority of obligation. Neither the Act nor the Regulations contain provisions on the priority of obligations in case of debtor default, which accordingly is governed by existing Ugandan legislation, particularly the law of pledges.

In the case the warehouse keeper is unable to deliver the due goods upon presentation of the warehouse receipt or a public declaration of insolvency, a lien exists on all of his or her goods and related assets in favour of receipt holders, including lenders who possess negotiable warehouse receipts. The lien claims are considered to be assigned to the Authority and, in case of subsequent liquidation, the lien transfers over the assets or proceeds of the assets received or liquidated by the Authority. The Authority enforces the lien claims and allocates the proceeds.¹¹¹¹

When the Authority is satisfied that a warehouse keeper is, or will in all probability be, unable to deliver the due goods upon presentation of the warehouse receipt, or that he or she will declare

insolvency, it can notify the warehouse keeper to immediately cease all goods-related operations and transactions, cover the shortage by supplying the goods or/and submit to such examination as the Authority deems necessary. If the warehouse keeper does not comply with the notice, the Authority can petition the court for an *ex parte* order authorizing it to seize and take possession as trustee of any goods in the warehouse and all pertinent records and property. The court can issue an order authorizing the Authority to take immediate possession for the purpose determined in the warehouse regulation.¹¹¹² If the Authority has evidence that a warehouse keeper is insolvent, it may petition the court for the appointment of a receiver to operate or liquidate the warehouse keeper's business.¹¹¹³

Offences and penalties. Part X of the Act contains a chapter determining the offenses and their associated penalties in the new warehouse receipt system. Warehouses can be liable for fines and imprisonment for issuing receipts for goods not actually received; for issuing receipts containing false statements; for issuing improper duplicate receipts for the same goods; for issuing receipts not stating that the goods are owned by the warehouse where they are stored; for releasing goods without the necessary presentation of a corresponding receipt; and for issuing receipts without the required valid licence.¹¹¹⁴

Additionally, the Authority can suspend or revoke any licence after a licence holder fails to comply with the Act and Regulations.¹¹¹⁵ Depositors are subject to fines and imprisonment for depositing goods that they do not own or goods subject to a pre-existing lien or security interest and taking a negotiable receipt for them that he or she afterwards negotiates with intent to deceive and without disclosing the lack of title or security interest.¹¹¹⁶

¹¹⁰⁸ Ibid., Sec. 43(1); Sec. 33(3), Warehouse Receipt System Regulations, 2007. If the goods are in imminent danger of deteriorating or losing value below the amount of storage charges due, a shorter notice period is permitted. Sec. 49(1), Warehouse Receipt System Act, 2006.

¹¹⁰⁹ Sec. 49(11), Warehouse Receipt System Act, 2006.

¹¹¹⁰ Ibid., Sec. 50.

¹¹¹¹ Sec. 49, Warehouse Receipt System Regulations, 2007.

¹¹¹² Ibid., Sec. 50(1)–(4).

¹¹¹³ Sec. 50(11), Warehouse Receipt System Act, 2006.

¹¹¹⁴ See *ibid.*, Sec. 58–62, 64.

¹¹¹⁵ Ibid., Sec. 34.

¹¹¹⁶ Ibid., Sec. 64.

Box 17: At a glance – Uganda’s warehouse receipts legislation

Key legislation: 2006 Warehouse Receipt System Act.

Scope: All things that are treated as movable for the purposes of a contract of storage or bailment, including – in the case of goods to be packed, processed, substituted or otherwise transformed in the warehouse – their products, documents, securities and instruments. But regulations restrict the Act’s application initially to the warehousing of agricultural commodities.

Institutional structure: The Act established the Uganda Warehouse Receipt System Authority as the regulatory and oversight body for the warehouse receipt system. Its authority has been delegated to the Uganda Commodity Exchange, a non-governmental entity.

Authorization and oversight of warehouses: The licensing requirements are set out by the Act and its implementing regulation, and the UCE has published detailed licensing criteria for warehouses.

Guarantees: To guarantee warehouse performance, warehouse keepers are required to provide a bond ensuring compliance with the rules on warehouse operation to obtain a licence.

Contractual rights and obligations of the parties and risk allocation: The Act outlines the basic obligations of warehouse keepers. For unavoidable damages despite the exercise of care, the warehouse keeper is not liable unless otherwise agreed.

Warehouse receipts: Uganda provides for single paper negotiable and non-negotiable warehouse receipts that are classified as documents of title.

Transferability of warehouse receipts: The legislation contains detailed provisions governing the negotiation of warehouse receipts. The Act created a central registry for warehouse receipts to be operated by the Authority.

Settlement and release of stored goods: Warehouses shall release stored goods upon presentation of a valid warehouse receipt by the holder to the person entitled under the receipt.

Execution and priority of obligations: Neither the Act nor its regulations contain provisions on execution or the priority of obligations in case of debtor default.

Offenses and penalties: The Act provides for penalties, including revocation of authorization, fines and imprisonment, for violations of warehouse rules and rules related to warehouse receipts.

Conclusion

Uganda has very recently, in 2006–2007, introduced its first specific law and subordinate regulations governing warehouses and the issuance of warehouse receipts. The introduction of warehouse receipt legislation aimed at addressing two major challenges of farmers: lack of effective postharvest handling and storage facilities and lack of access to short-term finance after harvest. These major challenges were again highlighted in the most recent Agricultural Sector Development Strategy and Investment Plan for 2010–2015. Because the legislation was recently introduced, experience with its application is still limited. Roughly four years after the enactment of the legislation, the Ugandan banks began offering finance agreements using warehouse receipts, and, amongst others, World Food Programme (WFP) is buying grain through the receipts system.

The Act contains the key provisions for both warehousing and warehouse receipts. Its application is initially limited to the warehousing of agricultural commodities. The Act establishes a regulatory and oversight authority for the warehouse system, whose functions have been delegated to a non-governmental entity, the UCE. The UCE issues and revokes licences and inspects all licenced warehouses. The Act contains detailed provisions on licensing and its requirements, as well as the inspection of warehouses.

In accordance with its aim to address the problem of poor postharvest handling and storage techniques, the Act and its regulations contain detailed provisions on the obligations of the warehouse keeper and the care of the goods. He or she must inspect, sample and grade commodities. Warehouse keepers must apply a reasonable care standard and are not liable for unavoidable damages despite such care. In Uganda, warehouse services constitute an important benefit for farmers. The warehouse dries, grades, packages and stores the grain, which helps to preserve a good quality that small farmers in Uganda can usually not assure on their own farm. These services combined with getting credit against the stored goods allow farmers to

wait to sell after harvest for a good price.¹¹¹⁷ This led, amongst others, to an increase in the quality of agricultural produce.

Both Uganda and Tanzania have taken the United States of America as a model, and the provisions on warehouse receipts in Uganda mirror the latter's provisions of legislation. Warehouse receipts can be issued as negotiable or non-negotiable. The warehouse keepers may issue warehouse receipts against their own stored commodities. This allows them to rapidly raise funds against the inventories. The new legislation also provides for a standardized form for negotiable warehouse receipts, which may be paper or electronic and bears specific security features. Still, the acceptance of the electronic warehouse receipt system has been identified as one of the current challenges in Uganda. A central registry for warehouse receipts has been created with the Authority, in which the issuance and negotiation of warehouse receipts is registered, as well as any security taken over it.

To guarantee warehouse performance, warehouse keepers are required to provide a bond ensuring compliance with the rules on warehouse operation in order to obtain a licence. No guarantee or indemnity fund has been established. The Act does not establish a privileged position for a warehouse receipt holder in case of debtor default. However, it contains specific provisions if the warehouse keeper is unable to deliver due goods upon presentation of the warehouse receipt. In this case, the receipt holders have a lien on all goods and related assets of the warehouse keeper. The lien is assigned to and enforced by the Authority, which also allocates the proceeds. If it appears that the warehouse keeper is or will be unable to deliver the due goods, the Authority may give notice to the warehouse keeper to cease his or her warehouse activities, and it may take possession as trustee of all goods. In case of non-compliance, the Authority will seize all stored goods after authorization by an *ex parte* order obtained from the court.

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¹¹¹⁷ Wamala, 2010.

Ukraine

Introduction to the agricultural sector and legal framework

The agricultural sector in Ukraine has undergone dramatic shifts in many regards during the two decades following the collapse of the Soviet Union.¹¹¹⁸ Prior to the breakup, Ukraine maintained relatively stable agricultural output, but then after the breakup, there were many transitional challenges for the sector and agricultural output declined by as much as 50 percent in the decade that followed. This decline in production resulted from hyperinflation, decreasing agricultural investments and the loss of export markets in former Soviet Republics, thereby forcing many producers into subsistence farming.¹¹¹⁹

A wave of legislative activity followed this period, including the promulgation of several pieces of legislation. Output has since stabilized and has gradually begun to improve.¹¹²⁰ In 2013, agriculture contributed 10 percent to the GDP.¹¹²¹ In the current agricultural outlook literature, Ukraine has several factors in its favour for growing its grain-export sector, including stable domestic consumption and significant room for added output gains from increased efficiency and commercialization.¹¹²² However, Ukraine's agricultural sector still faces several major obstacles to growth. Inadequate investments in infrastructure, sector governance issues and unavailability of credit are all among the list of identified challenges.¹¹²³

The importance of grain for the agricultural sector in Ukraine is high. Grain represented about 45 percent of total crop production in Ukraine in 2012, and 26.6 percent of the total agricultural exports in 2010.¹¹²⁴ Grain's relative importance in the agricultural sector has prompted specific attention in the legal framework. To further several broad policy objectives for reform

and development of the grain sector, Ukraine promulgated its Law on Grain and Grain Market in Ukraine (hereinafter, "Law on Grain") in July 2002.¹¹²⁵ The Law on Grain outlines 11 core objectives that range from relatively broad national goals, such as ensuring food security of the state, to supportive subgoals, such as instituting a mechanism for grain pledge procurement by the government.¹¹²⁶ For the purposes of this study, other notable objectives include developing the "investment, lending, tax, and customs policies beneficial for the grain market," and optimizing the "structure and efficiency of the grain production taking into account the climate potential and market policy."¹¹²⁷

The Law on Grain also introduced for the first time provisions for grain warehouse receipts, aiming in part at "improving access to private credit resources by allowing grain producers to use grain as collateral for loans, or to sell, trade or use the receipts for delivery against financial instruments such as futures contracts."¹¹²⁸ EBRD and the United States Agency for International Development (USAID) provided technical assistance for the introduction of grain warehouse receipts, and EBRD provided initial credit for lending based on grain warehouse receipts in order to get the system rolling.¹¹²⁹

In addition, the Law on Grain in Article 83(3) called for the Cabinet of Ministers of Ukraine to further develop the legal framework for warehouse receipts. Accordingly, regulations with detailed requirements for grain warehouses and warehouse receipts followed in 2003.¹¹³⁰ It is worth noting that in 2004, Ukraine's legislature expanded its framework for grain warehouse receipts to include other commodities, by way

¹¹¹⁸ FAO & EBRD, 2010, p. 3.

¹¹¹⁹ See *ibid.*, pp. 3, 32.

¹¹²⁰ See *ibid.*, p. 3.

¹¹²¹ World Bank Indicators, 2014.

¹¹²² See OECD, 2012, pp. 89, 90.

¹¹²³ FAO & EBRD, 2010, pp. 22–27.

¹¹²⁴ FAOSTAT, 2014. These were maize, wheat, barley, rye, oats, buckwheat, millet and sorghum.

¹¹²⁵ See Art. 2, Law on Grain and Grain Market in Ukraine, 2002. This case study relies on an unofficial English translation of this law, available at <http://www.eastagri.org/>.

¹¹²⁶ See *ibid.* Grain pledge procurement is defined in Article 1(7) as "the procurement of the grain from agricultural product manufacturers guaranteed by the state for a certain time on pledge prices with manufacturers' reserving the right to claim this grain during the period indicated in the grain pledge procurement contract".

¹¹²⁷ Art. 2, Law on Grain.

¹¹²⁸ See Arts. 37–46, Law on Grain. See also, FAO & EBRD, 2010, p. 23.

¹¹²⁹ FAO, 2009, p. 42.

¹¹³⁰ Resolution on certification of grain warehouses, 2003.

of the Law on Certified Commodity Warehouses and Simple and Double Warehouse Certificates (hereinafter, “Law on Certificates”). The broader framework for warehouse receipts can be found in the 2004 Law on Certificates and the 2003 Civil Code of Ukraine.

Still, during the first years of implementation, it was observed that the grain warehouse receipt system in Ukraine was not functioning optimally as a credit facilitator because certain factors had undermined the trust of lending financial institutions.¹¹³¹ It was suggested that these factors include ineffective enforcement procedures,¹¹³² inadequate quality and quantity monitoring systems and a perceived lack of clarity in the legislative framework governing warehouse receipts.¹¹³³ Notably, the legal provisions for warehouse receipts and the slight differences between the Law on Grain and the Law on Certificates have caused confusion.¹¹³⁴ To decrease the perceived risks for lenders and improve access to credit for producers,¹¹³⁵ Ukraine has taken steps to add performance guarantees to warehouse receipts and strengthen the trust of lenders by introducing a guarantee fund to back grain warehouse receipts.¹¹³⁶

Ukraine’s broader legal system has undergone similar, significant changes over the last two decades. Its legal system draws from the European civil law tradition but up until recently, many of its core instruments such as the Civil Code were viewed as outdated and inadequate for regulating modern commercial relations. Thus, after the breakup of the Soviet Union, Ukraine began to reform and update its legal system. A modern Civil Code was adopted in 2003,

replacing the previous Civil Code of 1964 that contained a mix of outdated provisions influenced by the German and Soviet legal systems.¹¹³⁷

Warehouse receipt legislation

The legal framework for warehouse receipts in Ukraine is made up of several different pieces of legislation. Grain warehouse receipts are defined as documents of title issued by the grain warehouse “to the grain owner to confirm the acceptance of the grain for the storage and vouch for the availability of the grain, and the undertaking of the grain depot to return the same to the party in possession of such a document.”¹¹³⁸ Their key legal provisions are in the 2002 Law on Grain and supporting regulations. Additionally, other relevant legislation include the Law on Pledge and the Law on Enforcement Proceedings.

Indicative of its broad focus on the whole grain sector, the Law on Grain covers aspects from government intervention to price guarantees and warehouse receipts. It comprises 13 sections: general provisions; grain market members; state regulation of the grain market; creating and utilizing grain resources; grain declaration and quality control; grain storage; grain depot documents; guarantee fund (formerly intervention procedures, removed by amendment); intervention fund (removed by amendment); export and import of the grain and grain products under international treaties of Ukraine; international cooperation; liability for the violation of the law; and final provisions. The aspects of the Law on Grain that relate to government intervention and price guarantees will not be discussed in this legislative study. Further requirements for grain warehouses and warehouse receipts can be found in the Cabinet of Ministers Resolution of 2003.

Scope. Ukraine’s 2002 Law on Grain focuses on a substantial portion of the entire grain production value chain, encompassing “a system of transactions arising among members of the market in the course of the grain production, storage, trade and utilization on a free

¹¹³¹ FAO & EBRD, 2010, pp. 23, 24.

¹¹³² FAO, 2011, p. 41.

¹¹³³ See *ibid.*, pp. 23, 24.

¹¹³⁴ For example, some commentators describe the Ukrainian warehouse receipt as a document of title, while others explicitly state that it is not a document of title. See FAO, 2011. See also, Vasil Kisil & Partners, 2007. And one commentator focuses on the differences between the two laws while ignoring the differences in scope and specificity. See FAO & EBRD, 2010, pp. 23–24 and Appendix Table A19.

¹¹³⁵ See Art. 48, Law on Grain, listing the objectives of the guarantee fund.

¹¹³⁶ See e.g., Law on amending certain laws concerning guarantee fund performance, 2012, creating a guarantee fund to back warehouse receipts.

¹¹³⁷ See Paliashvili, 1998.

¹¹³⁸ Art. 1, Law on Grain.

competition basis, the free choice of the ways to sell the grain and the free pricing, as well as the state control over the grain quality and storage.”¹¹³⁹ Thus, the Law on Grain applies to all members of the grain market, where the grain market is defined to include grain producers, grain storage facilities, accredited grain exchanges, parties involved in state intervention operations, grain pledge procurement and any “other business entities operating on the grain market.”¹¹⁴⁰

Grain producers, or “parties manufacturing the grain,” include land owners, land plot lessees and other land users that produce grain for domestic needs and export markets.¹¹⁴¹ Parties storing grain covered by this law include grain depots, grain elevators, bread depots, grain acceptance facilities, flour manufacturing facilities, mixed fodder enterprises and any other entities that accept, treat, store or ship grain.¹¹⁴²

Grain is legally defined in the Law on Grain Article 1(11) as “the fruit of grain, leguminous, and oil-yielding crops used for the food, seed, fodder and technical purposes.” The Law on Grain further defines three subcategories of grain based on end use: good grain, technical grain and forage grain.¹¹⁴³ Good grain is “grain used for the process and manufacture of foods”¹¹⁴⁴ that meets domestic or export market requirements for quality.¹¹⁴⁵ Technical grain is “grain dedicated for the industrial processing into other products (alcohol, starch, medical products, etc.)”¹¹⁴⁶ Lastly, forage grain is defined as “a group of forage and other grain crops designed to fodder the cattle and poultry in the form of a mixed fodder, etc.”¹¹⁴⁷

In Ukraine, warehouse receipts are primarily used for grain, and therefore this country chapter focuses on warehouse receipts under the Law on Grain, but this narrow scope is no longer necessary in the Ukrainian legal framework.

With the exception of some key elements such as the grain warehouse receipt guarantee fund, much of the system for warehouse receipts has been opened up to all commodities thanks to subsequently included sections in the Civil Code of Ukraine (Articles 936–966) and the Law on Certificates. Under the 2004 Law on Certificates Article 9, warehouses may issue warehouse receipts for any stored commodity that the warehouse has been licenced for.

Institutional structure. The State Agriculture Inspectorate¹¹⁴⁸ (*Derzhsilhospinspektsiyu*, also referred to as the Bread Inspection Agency¹¹⁴⁹) is the designated entity within the Ministry of Agrarian Policy and Food for ensuring compliance with warehouse licensing requirements and grain warehouse receipt practices.¹¹⁵⁰ The Inspectorate has broad responsibilities for inspecting, issuing licences and ensuring compliance with the full range of agricultural regulations.¹¹⁵¹ The Inspectorate can delegate grain warehouse inspection functions to local authorities, which must follow the same procedures and requirements.¹¹⁵²

Also within the Ministry of Agrarian Policy and Food, there is a centralized registry for grain warehouse receipts (the State Registrar) that maintains detailed information linked to individual computer registries at warehouses.¹¹⁵³

There is also the guarantee fund for grain warehouse receipts, a separate non-profit entity. Initially established in 2012 with a one-year interest-free loan from the government of Ukraine, the guarantee fund has its own legal personality and management structure.¹¹⁵⁴

Certification and inspection of warehouses. To operate grain warehouses, warehouse keepers must annually obtain a certification from the

¹¹³⁹ See Arts. 1(23), 3 and 5-8, Law on Grain.

¹¹⁴⁰ Ibid., Arts. 3 and 5.

¹¹⁴¹ See *ibid.*, Arts. 1(2) and 6.

¹¹⁴² See *ibid.*, Arts. 1(10) and 7.

¹¹⁴³ See *ibid.*, Art. 1(12)–(14).

¹¹⁴⁴ Ibid., Art. 1(12).

¹¹⁴⁵ See *ibid.*, Arts. 21–23.

¹¹⁴⁶ Ibid., Art. 1(13).

¹¹⁴⁷ Ibid., Art. 1(14).

¹¹⁴⁸ See the homepage of the State Agriculture Inspectorate at <http://disgu.gov.ua/>.

¹¹⁴⁹ FAO, 2009, p. 43.

¹¹⁵⁰ See Art. 2, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁵¹ See Decree on the State Agriculture Inspectorate, 2011.

¹¹⁵² See Arts. 6–13, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁵³ Decision on ensuring the implementation of the Law on Grain, 2004.

¹¹⁵⁴ See Arts. 47, 51, 55, 58 and 59, Law on Grain.

State Agriculture Inspectorate that their facilities and practices meet government standards.¹¹⁵⁵ The grounds for denying a certification are listed in the Law on Grain, Article 11: an application will be denied if a warehouse submits information that is incomplete, false or violates the certification requirements for warehouses.

The certification requirements are determined in the supporting regulations under the Law on Grain.¹¹⁵⁶ Upon initial application for a licence and during subsequent annual inspections, warehouses managers must comply with the following certification requirements:

- the availability of contracts for electricity, gas and water supply;
- the management practices in the warehouse;
- the presence of regulatory, technological, licensing and other documents;
- the availability of grain storage contracts and products;
- the correct determination of the quality of grain and products through comparative testing;
- the accuracy of quantitative and qualitative accounting for grain products;
- the availability of an internet connection (for the registry);
- record-keeping practices for the circulation of grain warehouse receipts;
- design documentation for technology, equipment and tools used.¹¹⁵⁷

Warehouses are not separately required to demonstrate insurance coverage or post a bond to be certified, but as part of their management practices, they must comply with requirements to insure stored goods.¹¹⁵⁸

Inspectors can conduct additional unscheduled audits upon a request alleging infractions, to check on corrections of noted infractions and

upon request of law enforcement authorities and courts.¹¹⁵⁹ The Inspectorate can delegate these functions to local authorities.¹¹⁶⁰ If an inspector finds that the warehouse has not complied with requirements, the Inspectorate will suspend the warehouse's certificate for up to 30 days to correct non-compliance, after which the certificate will be revoked.¹¹⁶¹ If a certified warehouse loses its certification, any receipts issued while the warehouse was certified will remain valid until expiration of the storage period under the receipt, but no further receipts can be issued.¹¹⁶² The Inspectorate maintains a central registry of certified warehouses.¹¹⁶³ As of June 2013, there were 742 certified grain warehouses in Ukraine listed on the central registry.¹¹⁶⁴

Warehouses also have specified requirements for record-keeping and insurance. Warehouse managers must keep specified registers to record quantities and qualities of grain stored on their premises.¹¹⁶⁵ And on a monthly basis, grain warehouse managers must submit confidential information to the Ministry of Agrarian Policy and Food on the amount and types of grain stored, so as to aid the government in its sector-control policies.¹¹⁶⁶ Warehouses must keep detailed registries for issued warehouse receipts according to serial numbers, and the registry must be updated when new warehouse documents are issued, previously issued receipts are repaid, receipts are lost or duplicate, simple depot certificates are issued.¹¹⁶⁷ Along with the registry files, cancelled depot certificates (certificates where the grain has already been released) must be kept for three years.¹¹⁶⁸ At the grain owner's expense, warehouses must insure stored goods covered by a warehouse document

¹¹⁵⁹ Art. 27, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁶⁰ See *ibid.*, Arts. 6-13.

¹¹⁶¹ Art. 11, Law on Grain; Art. 29, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁶² Art. 37, Law on Grain. See also, Art. 31, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁶³ Art. 11, Law on Grain.

¹¹⁶⁴ Cabinet of Ministers of Ukraine, 2013.

¹¹⁶⁵ Art. 36, Law on Grain.

¹¹⁶⁶ See *ibid.*, Arts. 19 and 20.

¹¹⁶⁷ See *ibid.*, Art. 45; Sec. 9, Decision on ensuring the implementation of the Law on Grain, 2004.

¹¹⁶⁸ See Art. 46, Law on Grain.

¹¹⁵⁵ *Ibid.*, Art. 11.

¹¹⁵⁶ *Ibid.*; Art. 14, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁵⁷ Art. 14, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹¹⁵⁸ See Art. 37, Law on Grain.

against accidental loss or damage.¹¹⁶⁹ In addition after 2012, warehouses must participate in and comply with record-keeping requirements of the guarantee fund established to back warehouse receipts.¹¹⁷⁰

Guarantee fund. To decrease the perceived risks for lenders,¹¹⁷¹ Ukraine has taken steps to guarantee performance under warehouse receipts, starting with a 2005 presidential decree that called for the creation of a guarantee fund.¹¹⁷² This fund was established after a 2012 amendment to the Law on Grain.¹¹⁷³ If a warehouse receipt holder presents a valid receipt for release of goods and the goods cannot be released, then the receipt holder may apply for reimbursement from the guarantee fund for up to 90 percent of the unrecovered value.¹¹⁷⁴ All grain warehouses issuing warehouse receipts must become members of and contribute to the fund according to the amount of grain taken in.¹¹⁷⁵

Initially established with a one-year interest-free loan from the government of Ukraine, the guarantee fund has its own legal personality, characteristics and management structure.¹¹⁷⁶ It is expected to grow from entrance fees and regular contributions from warehouses, income derived from the fund's investment in government securities, fines paid by non-compliant warehouses and interest payments from fund deposits in banks. The fund's value is targeted to remain between 10 and 20 percent of the sum of grain warehouse receipts issued during the preceding year, and no funding may carryover from year to year. If there is a deficit between available fund levels and the amount that needs to be reimbursed, the difference is to be covered by a loan from the state budget.¹¹⁷⁷

Contractual rights and obligations of the parties and risk allocation. Obligations of

warehouse managers are determined by the Law on Grain Section VI and some general provisions of the Civil Code of Ukraine and the Law on Certificates.¹¹⁷⁸ The contract for storing grain must use the format approved by the Cabinet of Ministers of Ukraine.¹¹⁷⁹ In 2003, the Cabinet of Ministers promulgated a resolution that further detailed warehouse requirements and provided the forms for grain storage contracts and for paper warehouse receipts.¹¹⁸⁰ The contract contains nine sections, including shelf life of the grain, obligations of the warehouse and grain owner, liabilities, rights to dispose of the goods and quality determination.¹¹⁸¹

Under the model contract for grain storage, a grain warehouse stores grain for a fee.¹¹⁸² When the grain owner delivers grain for storage at a warehouse, the warehouse manager is obligated to analyse the grain's quality or characteristics.¹¹⁸³ Grain warehouses must then keep and preserve the stored grain for the duration specified in the storage contract; if the term for storage is not specified, then the warehouse must keep the grain until the owner requests return or disposal.¹¹⁸⁴ It is the obligation of the warehouse manager to deliver covered goods when their valid receipt is presented.¹¹⁸⁵ The grain owner is required to pick up stored grain on time; if he or she fails to do so or removes the grain early, the grain warehouse owner is entitled to compensation for its losses.¹¹⁸⁶

Under Section VI, Article 25 of the Law on Grain, public grain warehouses must accept grain from any person, and they are required to abide by all applicable regulations and storage contract conditions while storing the goods. The duty of care is specified by the contract and commercial practice; thus, the warehouse manager

¹¹⁶⁹ See *ibid.*, Art. 37.

¹¹⁷⁰ See *ibid.*, Arts. 33–1 and 52.

¹¹⁷¹ See *ibid.*, Art. 48, listing the objectives of the guarantee fund.

¹¹⁷² See Sec. 2(4), Decision on the state of agriculture, 2005.

¹¹⁷³ Law on amending certain laws concerning guarantee fund performance, 2012.

¹¹⁷⁴ See Art. 49, Law on Grain.

¹¹⁷⁵ See *ibid.*, Arts. 52 and 56.

¹¹⁷⁶ See *ibid.*, Arts. 47, 51, 55, 58 and 59.

¹¹⁷⁷ *Ibid.*, Arts. 55 and 57.

¹¹⁷⁸ See Arts. 936–966, Civil Code; Arts. 27 and 28, Law on Certificates, 2005.

¹¹⁷⁹ *Ibid.*, Art. 26.

¹¹⁸⁰ Resolution on certification of grain warehouses, 2003.

¹¹⁸¹ See *ibid.*, Annex 1.

¹¹⁸² Art. 26, Law on Grain.

¹¹⁸³ *Ibid.*, Art. 24.

¹¹⁸⁴ *Ibid.*, Art. 27.

¹¹⁸⁵ *Ibid.*, Art. 24.

¹¹⁸⁶ See *ibid.*, Art. 28. For comparison, see also, Art. 28, Law on Certificates, 2005.

must keep the grain at the level stated in the contract.¹¹⁸⁷

Warehouses are liable to pay compensation to the grain owner for any loss of or damage to stored grain, except in cases of *force majeure*.¹¹⁸⁸

Warehouse receipts. Section VII of the 2002 Law on Grain introduced the present system for grain warehouse receipts in Ukraine. Only certified grain warehouses can issue grain warehouse receipts.¹¹⁸⁹ Upon delivery of goods for storage, the warehouse must issue one of three possible receipts within one working day, depending on the request of the grain owner: a simple depot (warehouse) certificate, a double depot certificate or a depot receipt.¹¹⁹⁰ Whereas the first two types of documents are internationally common warehouse receipts, the depot receipt is merely a document that acknowledges storage in the event that neither a simple nor double depot certificate is issued.¹¹⁹¹ Separate warehouse receipts must be issued for goods of different commodity classes under state standards, and if the grain owner requests, separate documents can be issued for portions of the grain stored.¹¹⁹²

These three documents must follow the formats provided by regulations, which in turn comply with the substantive requirements of the Law on Grain.¹¹⁹³ Warehouse receipts are issued in paper and are recorded in an electronic registry at each warehouse, which is linked to a central registry.¹¹⁹⁴ The Law on Grain Article 38 first outlines the requirements for double depot certificates. Each of the certificate's two parts must contain the same eight requirements. These requirements are the following:

- the name and address of the warehouse;
- the serial number of the certificate;

- the name and address of the grain owner;
- a description of the accepted goods;
- the storage period or method for determining the storage period;
- the storage fee due or the method for determining the fee;
- the certificate issue date;
- the signature and seal of the responsible official of the warehouse issuing the receipt;
- the name of the insurer of the stored goods.¹¹⁹⁵

Simple depot certificates must contain the following:

- the name and address of the warehouse;
- the serial number of the certificate;
- a description of the accepted goods;
- the storage period or method for determining the storage period;
- the storage fee due or the method for determining the fee;
- the certificate issue date;
- the signature and seal of the responsible official of the warehouse issuing the receipt;
- a statement that the certificate is issued to bearer.¹¹⁹⁶

The Law on Grain Articles 39 and 42 details the rights and obligations of the holder of each type of warehouse receipt document. The double depot certificate has two matching parts that can circulate separately or together: the depot certificate and the warrant (pledge certificate).¹¹⁹⁷ When in possession of both, the holder has full rights to dispose of the grain covered by the documents. When in possession of the depot certificate only, the holder has the right to dispose of the grain, but the grain may not be collected from the warehouse until proof is given that the loan granted on the basis of the pledge certificate has been repaid. When in possession of the pledge certificate only, the holder has the right to require the debtor to repay the total

¹¹⁸⁷ See Art. 32, Law on Grain; Arts. 942, 949, Civil Code.

¹¹⁸⁸ See Arts. 33 and 34, Law on Grain.

¹¹⁸⁹ See *ibid.*, Art. 1(15).

¹¹⁹⁰ *Ibid.*, Art. 37.

¹¹⁹¹ *Ibid.*, Art. 43.

¹¹⁹² *Ibid.*, Art. 37.

¹¹⁹³ See Annex 1, Resolution on certification of grain warehouses, 2003.

¹¹⁹⁴ Decision on ensuring the implementation of the Law on Grain, 2004.

¹¹⁹⁵ See Art. 38, Law on Grain. See also, Sec. 16, Resolution on certification of grain warehouses, 2003.

¹¹⁹⁶ Art. 41, Law on Grain.

¹¹⁹⁷ *Ibid.*, Art. 38.

amount of the principal debt and interest, as well as the rights to recover the amount due from the underlying grain. The holder of the depot certificate can pay the warehouse the money due under the loan on the pledge certificate to retrieve the grain.¹¹⁹⁸ On the other hand, when in possession of a simple depot certificate, the holder has full rights to pledge or dispose of the underlying grain. Transfer of the simple depot certificate by endorsement is equivalent to transfer of ownership of the grain.¹¹⁹⁹

Subsequent regulations created a centralized registry administered by the Ministry of Agriculture, which keeps track of all issuances of grain warehouse receipts.¹²⁰⁰ The central registry must be updated after a new warehouse document is issued; a previously issued warehouse receipt is cancelled; a warehouse receipt is lost; a duplicate, simple warehouse certificate is issued; and errors are detected in a warehouse receipt. The central registry is electronically linked with the individual registries at each warehouse.¹²⁰¹ Transfers of receipts are not required to be recorded in the registry.

Currently there is no legal provision for a system for electronic warehouse receipts. However, in June 2013 a draft bill was put forward by the Ministry of Agriculture for consideration.¹²⁰² In relevant parts, this 2013 draft law would amend the Civil Code of Ukraine, the Law on Grain and the Law on Certificates to allow for the introduction and eventual growth of a system for electronic warehouse receipts rather than just paper receipts.¹²⁰³

¹¹⁹⁸ Ibid., Art. 39.

¹¹⁹⁹ Ibid., Art. 42.

¹²⁰⁰ Decision on ensuring the implementation of the Law on Grain, 2004.

¹²⁰¹ See *ibid.*, Sec. 8 and 9.

¹²⁰² See generally, Draft Law on amending certain laws regarding guarantee fund performance, 2013.

¹²⁰³ See *ibid.*, Arts. I(1) (proposed amendments to Art. 961 of the Civil Code), I(2) (proposed amendments to Art. 2 of the Law on Certificates) and I(3)(6) (relevant proposed amendments to Art. 37 of the Law on Grain).

Transferability of warehouse receipts. Both simple depot certificates and double depot certificates can be transferred by an endorsement that must contain the name and address of the new holder, the date of the endorsement and the notarized signature of the previous holder.¹²⁰⁴ Insofar, the Law on Grain Article 40 refers to the applicability of the Ukrainian legal framework governing endorsements. An endorsement must be unconditional, and it is invalid if it provides for the right to receive just part of grain specified in the certificate.¹²⁰⁵ As mentioned, the two separate parts of the double depot certificate can be transferred jointly or separately.¹²⁰⁶ During the several years after introduction, double depot certificates are rarely circulated separately, indicating possible distrust by lenders.¹²⁰⁷

The Law on Grain Articles 37–39 contain provisions for using grain warehouse receipts for collateral to obtain loans. To pledge grain covered under a simple depot certificate, it must be handed over to the lender by endorsement; the grain owner can request that a duplicate receipt is printed with the pledge record on it.¹²⁰⁸ If a grain owner chooses to obtain a loan by pledging the pledge certificate of a double depot certificate, both parts of the certificate must be filled out with information on the loan provider, the amount, date provided and date of maturity. The loan cannot be for a period that exceeds the shelf life and/or storage period.¹²⁰⁹

Transfers of receipts are not required to be recorded in the centralized registry with the Ministry of Agriculture, which keeps track of grain warehouse receipts.¹²¹⁰

Settlement and release of stored goods.

Certified warehouses must release stored goods upon the demand of the warehouse receipt holder, even if the storage period has not expired, and upon presentation and subsequent

¹²⁰⁴ See Arts. 40 and 42, Law on Grain.

¹²⁰⁵ Sec. 30, Resolution on certification of grain warehouses, 2003.

¹²⁰⁶ Art. 40, Law on Grain.

¹²⁰⁷ See FAO, 2009, p. 32.

¹²⁰⁸ Art. 42, Law on Grain.

¹²⁰⁹ See *ibid.*, Art. 38.

¹²¹⁰ See Decision on ensuring the implementation of the Law on Grain, 2004.

transfer of the simple warehouse certificate or both parts of the double warehouse certificate (repaid if pledged).¹²¹¹ Even if not in possession of the pledge certificate, the holder of the depot certificate may pay the warehouse the money due under the loan on the pledge certificate in order to retrieve the grain.¹²¹² When the stored goods are released, the relevant warehouse receipt document(s) and the warehouse register must be annotated with notice of the cancellation.¹²¹³

Execution and priority of obligation. If stored goods are pledged for a loan and the loan period expires before repayment, the warehouse must sell the grain in the manner prescribed by law upon written request of the holder of the pledge certificate.¹²¹⁴ The Law on Grain does not contain explicit provisions of priority of obligations for grain warehouse receipts. These aspects are governed under more general legal framework, including the 2003 Civil Code of Ukraine, the 1992 Law on Pledge and the 1999 Law on Enforcement Proceedings. In case of default, the creditor of a warehouse receipt is not privileged in the priority ranking *vis-à-vis* other creditors, and no out-of-court enforcement exists for warehouse receipts. Commentators have noted that, in practice, enforcement proceedings can take many months in the Ukrainian legal system.¹²¹⁵

Offences and penalties. According to Article 82 of the Law on Grain, parties who violate its provisions will be liable for penalties imposed by state agriculture inspectors. There are monetary fines for a grain warehouse operator who operates a grain warehouse without being certified.¹²¹⁶ Certified warehouses that violate requirements can have their certification revoked by the State Agriculture Inspectorate if an inspection finds non-compliance with any of the requirements for warehouses.¹²¹⁷ Warehouses initially have a 30-day suspension period to

Box 18: At a glance – Ukraine's warehouse receipts legislation

Key legislation: The 2002 Law on Grain and 2004 Law on Certificates.

Scope: Grain defined as the fruit of grain, leguminous and oil-yielding crops used for food, seed, fodder and technical purposes. Under the Law on Certificates, warehouses can issue warehouse receipts for any stored commodity that the warehouse has been licenced for.

Institutional structure: The State Agriculture Inspectorate is the designated entity within the Ministry of Agrarian Policy and Food for ensuring compliance with warehouse licensing requirements and grain warehouse receipt practices.

Authorization and oversight of warehouses: Grain warehouses must annually obtain a certification from the State Agriculture Inspectorate that their facilities and practices meet government standards.

Guarantees: Receipt holders may apply for reimbursement from a guarantee fund for up to 90 percent of the unrecovered value.

Contractual rights and obligations of the parties and risk allocation: Obligations of warehouse keepers are determined by the Law on Grain, and relevant general provisions are also contained in the Civil Code of Ukraine.

Warehouse receipts: The Law on Grain allows for a choice between the issuance of single or double paper receipts. Currently electronic receipts are not provided.

Transferability of warehouse receipts: A centralized registry administered by the Ministry of Agriculture keeps track of all issuances and trades of grain warehouse receipts.

Settlement and release of stored goods: Warehouses must release stored goods upon the demand of the holder of the receipt – even if the storage period has not expired – and upon presentation and subsequent transfer of the simple certificate or both parts of the double certificate (repaid if pledged).

Execution and priority of obligations: In case of default, the creditor of a warehouse receipt is not privileged in the priority ranking *vis-à-vis* other creditors and no out-of-court enforcement exists for warehouse receipts.

Offenses and penalties: Parties who violate the provisions of the Law will be liable for penalties imposed by state agriculture inspectors.

¹²¹¹ Art. 16, Law on Certificates, 2005.

¹²¹² Art. 39, Law on Grain.

¹²¹³ See *ibid.*, Art. 46.

¹²¹⁴ See *ibid.*, Art. 39.

¹²¹⁵ FAO, 2011, p. 41.

¹²¹⁶ See Art. 82, Law on Grain.

¹²¹⁷ *Ibid.*, Art. 11.

correct any aspects of non-compliance, after which the licence will be revoked.¹²¹⁸ Regulations allow for an appeal procedure for decisions to revoke certification.¹²¹⁹

Conclusion

Because of the strength of Ukraine's grain sector and the 2002 introduction of core legislation for grain warehouse receipts, commentators have noted that Ukraine has strong future potential for development of a widely used and effective system for grain warehouse receipt finance.¹²²⁰ Many of the key legislation elements are present. Similar to Kazakhstan – a country in the region that developed its successful system around the same time – effective legal and institutional mechanisms have been put in place to increase trust in warehouses. To operate a warehouse, grain warehouses must annually obtain a certification from the State Agriculture Inspectorate that their facilities and practices meet government standards.¹²²¹ Upon initial application for a licence and during subsequent annual inspections, inspectors must inspect for compliance with an extensive range of certification requirements.¹²²² The legal framework further supports trust in warehouses by providing for an escalating scale of monetary fines for violations, in addition to suspensions and revocations of certification.

The legal framework provides for both single and two-part warehouse receipts and explicit requirements for their content and means of transfer. The two-part receipt is common in civil law tradition countries and is typically preferred by commodity-sector actors and lenders because there is a lower chance of documentary fraud (in the absence of electronic registries).¹²²³ Ukraine has taken a major step to reducing document fraud by creating a centralized electronic registry to record all issuances and cancellations of

receipts, but subsequent transfers are not required to be recorded.

However, after several years of implementation, commentators have noted that the grain warehouse receipt system in Ukraine is not functioning optimally as a credit facilitator.¹²²⁴ Some of the identified obstacles require further legislative development, while others require more effective implementation and enforcement of existing legislation and regulations. Regarding needed legislative developments, two identified weak points in the legislative framework are slow recovery procedures in the event of debtor default and inadequate performance guarantees.

Ukraine has recently worked to improve the factors that had undermined the trust of lenders by introducing a guarantee fund to back grain warehouse receipt performance.¹²²⁵ Furthermore, a draft law has recently been introduced to create a system for electronic warehouse receipts, which can improve trust in the system by reducing instances of document fraud. For implementation, commentators have suggested that these obstacles include ineffective licensing enforcement procedures,¹²²⁶ inadequate quality and quantity monitoring systems and industry confusion over requirements in the legislative framework governing warehouse receipts.¹²²⁷

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Cabinet of Ministers Decree on approval of the certificate of compliance for services to store grain and its products, Order No. 1294. 2 December 2009.

¹²¹⁸ Art. 29, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹²¹⁹ Ibid., Art. 38.

¹²²⁰ FAO, 2009, p. 37.

¹²²¹ Art. 11, Law on Grain.

¹²²² Art. 14, Decree on approval of the certificate of compliance for services to store grain, 2009.

¹²²³ See FAO, 2009, p. 18.

¹²²⁴ FAO & EBRD, 2010, pp. 23, 24.

¹²²⁵ See e.g., Law on amending certain laws concerning guarantee fund performance, 2012.

¹²²⁶ FAO, 2011, p. 41.

¹²²⁷ See *ibid.*, pp. 23, 24.

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United States of America

Introduction to the agricultural sector and legal framework

The United States of America is a major global agricultural producer and exporter across a diverse range of products, including soybeans, soybean meal, cotton, wheat and corn.¹²²⁸ Government policies have favoured a shift towards larger farms, and the agricultural sector as a result experienced significant efficiency gains since the 1980s.¹²²⁹

The federal government became actively involved in agricultural credit and finance as an emergency measure during the economic crisis of the Great Depression in the 1930s, and over the following decades, government involvement continued and became the norm.¹²³⁰ Government involvement in agricultural credit comes in two forms: direct intervention of government agencies and support to government-sponsored enterprise (GSE) lenders.¹²³¹

Permanently authorized by the Consolidated Farm and Rural Development Act of 1972,¹²³² the Farm Service Agency (FSA) of the United States Department of Agriculture (USDA) provides last-resort direct loans and loan guarantees for farmers that cannot obtain other financing.¹²³³ In 1916, the Farm Credit System (FCS) was established to address a lack of private agricultural credit.¹²³⁴ The FCS is a for-profit GSE that competes directly with private lenders to provide credit to agricultural producers and is able to offer attractive loan rates because of its tax benefits.¹²³⁵ In 1960, individuals provided the largest share of farm lending, at 40 percent of the total. Over the last few decades, the share of agricultural credit provided by commercial banks has increased slightly and so has the share of the FCS. Currently, commercial banks provide roughly 44 percent of total farm lending, the FCS

39 percent, individuals and others 9 percent, life insurance companies 6 percent and the FSA 2 percent.¹²³⁶

To understand the system of agricultural finance in the United States of America, it is necessary to consider the structure of its legal system. The United States has a federal government system, where the national government has the power to legislate only in limited enumerated areas,¹²³⁷ such as matters affecting interstate and foreign commerce.¹²³⁸ Thus, for example, in the national law governing agricultural warehouses, a warehouse is defined as “a structure or other approved storage facility, as determined by the Secretary, in which any agricultural product may be stored or handled for the purposes of interstate or foreign commerce”.¹²³⁹ All residual powers are reserved for state governments, and therefore it is often necessary to account for the potential wide variation in individual state laws and regulations. Furthermore, the American legal system falls within the common law legal tradition (with few exceptions), where court decisions have a prominent role interpreting legislation.¹²⁴⁰ Although a given law may appear similar in two different states, courts in those two states may have interpreted the law very differently.

While there is systemic potential for variation between states, in actuality, commercial law is fairly consistent between them. That is because commercial transactions in the United States must be viewed within the framework of the Uniform Commercial Code (UCC).¹²⁴¹ The UCC is a very influential model code developed and modified over several decades by two private organizations of scholars and practitioners: the Uniform Law Commission and the American Law Institute.¹²⁴²

¹²²⁸ See USDA, 2012, pp. 23, 28, 33, 35, 39, 59.

¹²²⁹ See O'Donoghue et al., 2011, p. 70.

¹²³⁰ See Barnes, 1993, p. 468.

¹²³¹ See Monke, 2010, p. 1.

¹²³² Codified at 7 U.S.C. 1921 et seq.

¹²³³ See Monke, 2010, p. 9.

¹²³⁴ Federal Farm Loan Act of 1916, currently authorized by Farm Credit Act of 1971, 12 U.S.C. § 2001 et seq.; see also, Monke, 2010, p. 9.

¹²³⁵ Monke, 2007, pp. 1, 2; see Monke, 2010, p. 9.

¹²³⁶ Monke, 2010, p. 2.

¹²³⁷ See US Constitution, Art I. Sect. 8.

¹²³⁸ Ibid., Art. I Sect. 8, Clause 3 and 18.

¹²³⁹ 7 U.S.C. § 241(10).

¹²⁴⁰ See University Ottawa, 2013.

¹²⁴¹ For a discussion of the UCC in the context of agriculture, see National Agricultural Law Center, 2013.

¹²⁴² See J. Michael Goodson Law Library, 2011.

The UCC is comprehensive and unifies many aspects of contracts and commercial law. It contains Article 7: "Warehouse Receipts, Bills of Lading and Other Documents of Title". Article 7 was promulgated in 1951 and was not revised until 2003. This revision mainly served to recognize electronic documents of title. Being largely unchanged for over 50 years, Article 7 is widely considered as a successful model for a warehouse receipt law.¹²⁴³ This model code contributed to harmonization of warehouse receipt legislation among states. Every state within the United States of America has adopted at least some part or version of the UCC;¹²⁴⁴ however, the enacted version often differs slightly from state to state because of modifications of individual states.¹²⁴⁵

Warehouse receipt legislation

In the United States, the legal framework regulating agricultural warehouses and warehouse receipts is a complex system where a voluntary federal scheme overlays a mixture of varying state laws.¹²⁴⁶ Generally, public agricultural warehouses can choose between being federally or state regulated.¹²⁴⁷ At the national level, agricultural warehouses can be regulated under the United States Warehouse Act (USWA), enacted in 1916 and substantially revised in 2000.¹²⁴⁸ The USWA and its supporting regulations¹²⁴⁹ apply only to warehouses that apply for a federal licence¹²⁵⁰ and contain provisions on warehouse licensing, bonding and insurance, inspection, operation and issuing warehouse receipts.¹²⁵¹ Violators of the federal

scheme are civilly liable for the value of the goods in question.¹²⁵²

With respect to warehouse licensing and operational requirements, states vary widely.¹²⁵³ Some states closely regulate and supervise warehouses,¹²⁵⁴ while other states have no requirements whatsoever. Because the federal licensing system is voluntary, agricultural warehouses in these states can be unregulated.¹²⁵⁵ When a warehouse chooses to be licensed under the federal scheme, state requirements in this domain no longer apply.¹²⁵⁶ In this study the major focus is on the provisions of the USWA, with corresponding general information on state frameworks if possible.

Scope. The USWA and its supporting regulations apply to warehouses storing agricultural products that choose to be licensed under the federal scheme. The scope of application of the USWA, both for warehouse and warehouse receipt regulation is limited by the definition of agricultural products promulgated by the Department of Agriculture in the USWA's supporting regulations.¹²⁵⁷ An agricultural product is defined as an "agriculturally-produced product stored or handled for the purposes of interstate or foreign commerce, including a processed product of such agricultural product, as determined by [the oversight institution]".¹²⁵⁸

Warehouses are defined as a "structure or other authorized storage facility, as determined by [the oversight institution], in which any agricultural product may be stored or handled for the purpose of interstate or foreign commerce".¹²⁵⁹

At the state level, the enacted version of the UCC does not restrict its scope for warehouse

¹²⁴³ See Uniform Law Commission, 2013a, p. 1; New York City Bar, 2011, p. 1 et seq.

¹²⁴⁴ For helpful charts that link UCC provisions with the enacted versions in each state, see Cornell Law School Legal Information Institute, 2013.

¹²⁴⁵ See e.g., Uniform Law Commission, UCC Article 1 Enactment Status Map; for an example of the level of variation between states, see Cromwell, 2011.

¹²⁴⁶ See Kershen, 2004, pp. 6, 7.

¹²⁴⁷ See e.g., Illinois State Department of Agriculture, Grain Dealer / Grain Warehouse Licence Requirements 1, and Kershen, 2004, p. 7.

¹²⁴⁸ US Warehouse Act, 2000, codified at 7 U.S.C. §§ 241-256.

¹²⁴⁹ See 7 C.F.R. 735 et seq., regulations supporting USWA.

¹²⁵⁰ See e.g., 7 U.S.C. § 250(e)(8). Information about the USWA and lists of licensed warehouses are available on the website of the USDA Farm Service Agency, see www.fsa.usda.gov.

¹²⁵¹ 7 U.S.C. §§ 242 (j)-(k) and 7 C.F.R. 735.100-735.112; 7 U.S.C. § 245 and 7 C.F.R. 735.102, 735.104, 735.14; 7 U.S.C. § 242(d) and 7 C.F.R. 735.108; 7 U.S.C. §§ 246-49 and for a thorough discussion of the operational obligations of grain

warehouses in the US, see Kershen, 2004, pp. 9-16; 7 U.S.C. §§ 250-51 and 7 C.F.R. 735.300-735.404, respectively.

¹²⁵² See 7 U.S.C. § 254.

¹²⁵³ See Kershen, 2004, p. 8.

¹²⁵⁴ See e.g., Illinois Grain Code, 240 I.L.C.S. 40; see also, Illinois State Department of Agriculture, Grain Dealer / Grain Warehouse Licence Requirements 1 and Illinois Grain Code Information.

¹²⁵⁵ See Kershen, 2004, p. 8.

¹²⁵⁶ 7 C.F.R. 735.1(C).

¹²⁵⁷ 7 U.S.C. § 242(b).

¹²⁵⁸ 7 C.F.R. 735.3.

¹²⁵⁹ Ibid.

receipts to agricultural products. Thus, warehouse receipts can be issued for any movable goods.¹²⁶⁰

Institutional structure. Institutional responsibilities under the USWA are centralized in the USDA. The USDA has “exclusive power, jurisdiction, and authority, to the extent that this chapter applies, with respect to (1) each warehouse operator licenced under this chapter; (2) each person that has obtained an approval to engage in an activity under this chapter; and (3) each person claiming an interest in an agricultural product by means of a document or receipt subject to this chapter.”¹²⁶¹ The USDA has the powers to investigate; inspect; determine suitability for storage; classify warehouses; prescribe the duties for warehouse operators; regulate electronic registry systems; conduct examinations and audits of warehouses, state regulatory agencies and commodity exchanges; issue licences to warehouses, inspectors, samplers and other involved persons; examine books, papers and accounts of warehouses; and cooperate with state authorities.¹²⁶² Because of the balance between federal and state domains, the USDA does not have the authority to establish rules governing security-interest filing procedures and priority orders, as these fall under the ambit of state-enacted versions of the UCC.¹²⁶³

Within the USDA, the designated implementing agency is the Deputy Administrator for Commodity Operations (DACO) of the FSA.¹²⁶⁴

Licensing and inspection of warehouses.

Licensing of warehouses under the federal scheme is voluntary. Although voluntary, there may be strong commercial incentives to be licenced and perceived as a low-risk storage services provider. The market usually requires warehouses to obtain a licence under state or federal legislation. DACO can issue a licence to a warehouse operator if it determines that “the warehouse is suitable for the proper storage of the agricultural product or products stored or

proposed for storage in the warehouse” and the warehouse operator agrees to comply with the requirements of the USWA.¹²⁶⁵

To receive a licence under the USWA, the warehouse operator must post a bond or other means of financial assurance of an amount determined by DACO in order to guarantee performance of obligations under the licence. The third-party provider of the bond or financial assurance must be subject to service of process (available for court action) in the state where the warehouse is located. Over time, DACO may require additional guarantees from licenced warehouses and may revoke licences if guarantee requirements are not met.¹²⁶⁶ The list of licenced warehouses is made public by DACO to facilitate public awareness.¹²⁶⁷

An applicant for a licence from DACO must submit an application demonstrating compliance with detailed technical requirements.¹²⁶⁸

Applicants must comply with licensing criteria: the warehouse is suitable for storage of the proposed goods; operating policies comply with industry standards; the operator maintains full control over the proposed premises; and the operator meets minimum financial and net worth requirements established by DACO.¹²⁶⁹ If more than one agricultural product is proposed for storage, then licence requirements and funding levels are established at the highest amount of the applicable commodities.¹²⁷⁰ Warehouses are inspected by DACO upon application for a licence, and then subsequently at unannounced intervals to check compliance with requirements.¹²⁷¹

Warehouse keepers must maintain detailed records and provide information reports as DACO requires.¹²⁷² Operators of licenced warehouses must immediately self-report to DACO any violations of the USWA and supporting

¹²⁶⁰ See U.C.C. 7-102(7) and 7-201.

¹²⁶¹ See generally, 7 U.S.C. §242.

¹²⁶² See generally, *ibid.*

¹²⁶³ See *ibid.*, §242(h)(2).

¹²⁶⁴ 7 C.F.R. 735.2(a).

¹²⁶⁵ See 7 U.S.C. §242(j).

¹²⁶⁶ *Ibid.*, §245(a)-(c).

¹²⁶⁷ See *ibid.*, §253.

¹²⁶⁸ 7 C.F.R. 735.100(a).

¹²⁶⁹ *Ibid.*, 735.100(b) and (c).

¹²⁷⁰ *Ibid.*, 735.100(e).

¹²⁷¹ See *ibid.*, 735.108.

¹²⁷² 7 U.S.C. §246; 7 C.F.R. 735.101.

regulations.¹²⁷³ Warehouse operators must also report any cases of loss by disaster.¹²⁷⁴

Guarantees. Federally licenced warehouses are subject to mandatory bonding requirements. To receive a licence under the USWA, the warehouse operator must post a bond or other financial assurance of an amount determined by DACO to guarantee performance.¹²⁷⁵ Other permissible financial assurances include obligations that are unconditionally guaranteed by the American government, irrevocable letters of credit or participation in an indemnity or insurance fund administered by a state government.¹²⁷⁶

Assurances or bonding must be maintained until one year after cancellation of the licence or after satisfaction of all claims, whichever is later.¹²⁷⁷ The third-party provider of the bond or financial assurance must be subject to service of process (available for court action) in the state where the warehouse is located.¹²⁷⁸ Over time, DACO may require additional guarantees from licenced warehouses and can revoke licences if guarantee requirements are not met.¹²⁷⁹

Contractual rights and obligations of the parties and risk allocation. Under the USWA, discrimination by warehouses is prohibited. As long as the depositor's goods are the kind stored, there is sufficient available capacity and their delivery is made according to trade practice, the warehouse cannot refuse the deposit. However, licenced warehouses are permitted to enter into prior agreements with depositors to allocate and reserve available storage space.¹²⁸⁰ The charging of exorbitant tariffs is similarly prohibited.¹²⁸¹

Under the USWA, it is the warehouse's duty to deliver, without unnecessary delay, the stored goods upon presentation of a valid receipt or request of the owner (if no receipt was

issued).¹²⁸² But the warehouse can require that accrued due storage charges be paid before release of the goods.¹²⁸³ The original warehouse still has the duty to deliver even if stored goods are transferred to another warehouse during the storage period.¹²⁸⁴

Licenced warehouses must always, including during times of licence suspension, maintain a level of care for stored agricultural products as required by the conditions of their licence.¹²⁸⁵ Warehouses may commingle fungible agricultural products if in compliance with technical requirements prescribed by DACO.¹²⁸⁶

Warehouse performance is excused in cases of *force majeure*.¹²⁸⁷ If a warehouse commingles fungible agricultural products in compliance with technical requirements prescribed by DACO, the warehouse is liable to each depositor as though the goods had been kept in separate storage.¹²⁸⁸

Warehouse receipts. Issued by a warehouse at the request of a person or entity that deposits goods,¹²⁸⁹ a warehouse receipt is a document of title that serves three primary functions: ownership, a receipt and contractual.¹²⁹⁰ The ownership function serves to establish who can claim the goods in the warehouse, and the receipt function provides evidence of a paper or electronic trail of transactions in goods. A warehouse receipt serves a contractual function because receipts often contain provisions of the storage agreement.¹²⁹¹

Any warehouse can issue a warehouse receipt, where warehouses are regulated by the relevant state and/or federal warehouse regulations.¹²⁹² Federally licenced warehouses must submit to DACO the name and signature of any person

¹²⁷³ 7 C.F.R. 735.13.

¹²⁷⁴ *Ibid.*, 735.109.

¹²⁷⁵ 7 U.S.C. §245(a).

¹²⁷⁶ 7 C.F.R. 735.102(a).

¹²⁷⁷ *Ibid.*, 735.102(b).

¹²⁷⁸ 7 U.S.C. §245(b).

¹²⁷⁹ *Ibid.*, §245(c).

¹²⁸⁰ *Ibid.*, §247(a) and (b).

¹²⁸¹ 7 C.F.R. 735.107.

¹²⁸² See 7 U.S.C. §251(a).

¹²⁸³ See *ibid.*, §251(b).

¹²⁸⁴ *Ibid.*, §249(b).

¹²⁸⁵ 7 C.F.R. 735.105.

¹²⁸⁶ 7 U.S.C. §248(a).

¹²⁸⁷ 7 C.F.R. 735.110(e).

¹²⁸⁸ 7 U.S.C. §248(b).

¹²⁸⁹ 7 C.F.R. 735.300(b)(1); U.C.C. 7-201(a).

¹²⁹⁰ See Kershen, 2004, p. 16.

¹²⁹¹ See *ibid.*, pp. 16, 17.

¹²⁹² A "warehouse" is a person engaged in the business of storing goods for hire, U.C.C. 7-102(13); U.C.C. 7-201(a) and 7 U.S.C. §250(a).

authorized to issue warehouse receipts.¹²⁹³ The federal system for regulation of warehouse receipts is very similar to, and complemented by, state regulation. A warehouse licenced under the USWA issues a receipt (either in paper form or electronically) to the depositor when he or she deposits agricultural products for storage.¹²⁹⁴ The receipt can be negotiable or non-negotiable.¹²⁹⁵

The issuance of warehouse receipts is fairly uniform between states. In state-regulated warehouses, issuance of receipts is governed by the state's enacted version of UCC Article 7 on documents of title. UCC Article 7's treatment of warehouse receipts is largely the same as the federal scheme of the USWA. In fact even for warehouses licenced at the federal level, UCC provisions for warehouse receipts still apply because the USWA does not contain many substantive requirements on receipts.¹²⁹⁶ UCC Article 7 has the same general mechanics for receipt issuance: it allows negotiable¹²⁹⁷ or non-negotiable receipts and electronic receipts.¹²⁹⁸ UCC Article 3 contains further general provisions regulating negotiable instruments.

Once issued, the receipt may be used as collateral for public or private agricultural financing. Secured transactions are primarily governed at the state level by the relevant enacted version of UCC Article 9, which is a complex set of rules governing "any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property."¹²⁹⁹ There are two stages for the general rule for secured transactions under the UCC, attachment and perfection. Attachment occurs when a debtor and a creditor enter into an agreement (for example, an agreement to provide an operating loan) using the debtor's property as collateral. Perfection occurs when a creditor files a form with the designated state official,

providing notices to other creditors because the UCC determines that the first to file has the first right of collection upon default.¹³⁰⁰

The basic mechanics of agricultural finance under UCC Article 9 are demonstrated by the following example.¹³⁰¹ A farmer goes to a public or private lender to obtain a loan. The lender requires the farmer to sign a security agreement that grants the lender a security interest in the goods deposited in the warehouse, and possibly an interest in other property owned by the farmer as additional collateral.¹³⁰² To perfect the security interest, the lender files a form with the designated state official who accepts UCC filing forms. The perfection process is slightly different depending on whether the issued warehouse receipt is negotiable or non-negotiable.¹³⁰³

In general, a warehouse receipt need not be in any particular form, but must include several items:

- the location of the warehouse facility where the goods are stored;
- the date of issue of the receipt;
- the consecutive number of the receipt;
- a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or its order;
- the rate of storage and handling charges, but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a non-negotiable receipt;
- a description of the goods or of their packages;
- the signature of the warehouse operator or the authorized agent;
- if the receipt is issued for goods that the warehouse operator owns, either solely or jointly, the fact of such ownership;
- a statement of the amount of advances made and of liabilities incurred for which the warehouse operator claims a lien or security interest. If the precise amount of such

¹²⁹³ See 7 C.F.R. 735.301.

¹²⁹⁴ *Ibid.*, 735.300(b)(1).

¹²⁹⁵ *Ibid.*, 735.300(a)(1).

¹²⁹⁶ See U.C.C. 7-103.

¹²⁹⁷ "A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person," U.C.C. 7-104(a).

¹²⁹⁸ See U.C.C. 7-201 to 7-210 and 7-501 to 7-509.

¹²⁹⁹ See Uniform Law Commission, U.C.C. Article 9, Secured Transactions (1998) Summary, also for the current enactment status of Article 9 in the various states.

¹³⁰⁰ See *ibid.*; see also, U.C.C. 9-322(a).

¹³⁰¹ See Meyer, 2002, pp. 181-183.

¹³⁰² See U.C.C. 9-102(73); U.C.C. 1-201(35).

¹³⁰³ See U.C.C. 9-312 (b) and (c).

advances made or such liabilities incurred is – when the receipt is issued – unknown to the warehouse operator or the agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.¹³⁰⁴

The warehouse operator may insert in the receipt other terms, provided that they are in line with the provisions of the act and do not impair the operator's obligation of delivery or duty of care.¹³⁰⁵ Paper receipts issued by federally licenced warehouses must be on paper specified by DACO.¹³⁰⁶ Electronic warehouse receipts must contain several further details.¹³⁰⁷ Electronic receipts issued by state or federally regulated warehouses must be centrally registered.¹³⁰⁸ For trading on an exchange, each individual exchange requires registration of the receipts.¹³⁰⁹

Transferability of warehouse receipts.

Generally, warehouse receipts are tradable if made out as negotiable and registered at one of the exchanges.¹³¹⁰ The rules for endorsement and transfer of warehouse receipts are contained in each state's enacted version of Part 5 of UCC Article 7. If a paper warehouse receipt is made out to a named person, then transfer requires the signature of the named person and that the receipt is physically delivered. But if drawn to blank or to bearer, the warehouse receipt is transferred by delivery alone. For electronic receipts, the document can be negotiated by electronic delivery of the document to another person. Endorsement of a non-negotiable receipt does not make it negotiable or give any rights to the endorsee.¹³¹¹

Settlement and release of stored goods. Under the USWA legal framework, it is an express duty of the warehouse to deliver, without unnecessary delay, the stored goods upon presentation of a valid receipt or request of the owner (if no receipt

was issued). But the warehouse can require the accrued due storage charges to be paid before release of the goods.¹³¹² Thus, the warehouse will release the goods to the depositor (or other lawful holder of the receipt, if it was sold or traded) upon surrender and cancellation of the outstanding receipt.¹³¹³

Execution and priority of obligation. After default, the creditor for a loan secured by a warehouse receipt can proceed judicially through state courts or extra-judicially if done in a commercially reasonable manner.¹³¹⁴ Creditors lending on the basis of warehouse receipts enjoy a privileged recovery position if filing formalities are done correctly. Ordinarily, the priority of security interests is governed by the first to file (perfection) rule.¹³¹⁵ To perfect the security interest, the lender files a form with the designated state official who accepts UCC filing forms. The perfection process is slightly different depending on whether the issued warehouse receipt is negotiable or non-negotiable. While underlying goods are stored by the warehouse that issued the warehouse receipt, the creditor holding a perfected security interest over the receipt has a priority right over other possible claims on the underlying goods.¹³¹⁶

Offences and penalties. The USWA prescribes two categories of penalties depending on whether non-compliance involves agricultural products or not.¹³¹⁷ For violations involving an agricultural product, the warehouse is civilly liable for the full monetary value of the stored product. For violations not directly involving an agricultural product, the warehouse is liable for a monetary fine of not more than USD 25 000 per violation.¹³¹⁸

Beyond monetary fines, DACO can suspend or revoke licences for a material failure to comply with the requirements of the USWA and its

¹³⁰⁴ Ibid., 7-202 (2).

¹³⁰⁵ Ibid., 7-202 (3).

¹³⁰⁶ 7 C.F.R. 735.302(a).

¹³⁰⁷ See USDA, 2013.

¹³⁰⁸ 7 U.S.C. §250 (e)(2) and (7).

¹³⁰⁹ See e.g., Kansas City Board of Trade, 2013.

¹³¹⁰ See e.g., *ibid.*; see also, U.C.C. Article 3.

¹³¹¹ U.C.C. 7-501(a)-(c).

¹³¹² See 7 U.S.C. §251(a) and (b).

¹³¹³ U.C.C. 9-609.

¹³¹⁴ See *ibid.*, 9-322(a); see also, Uniform Law Commission, UCC Article 9, Secured Transactions (1998) Summary.

¹³¹⁵ See U.C.C. 9-322(a); see also, Uniform Law Commission, UCC Article 9, Secured Transactions (1998) Summary.

¹³¹⁶ See U.C.C. 9-312 (b) and (c).

¹³¹⁷ 7 U.S.C. §254; 7 C.F.R. 735.5.

¹³¹⁸ 7 U.S.C. §254.

Box 19: At a glance – the United States of America's warehouse receipts legislation

Key legislation: United States Warehouse Act, UCC and state (sub-national level) laws.

Scope: Agricultural products under USWA and movable goods under the UCC.

Institutional structure: A voluntary federal scheme overlays a mixture of varying state laws. Within the federal scheme, the designated implementing agency is the USDA's Deputy Administrator for Commodity Operations.

Authorization and oversight of warehouses: Licensing of warehouses under the federal scheme is voluntary, but it may be mandatory under state law.

Guarantees: Federally licenced warehouses are subject to mandatory bonding requirements.

Contractual rights and obligations of the parties and risk allocation: Licenced warehouses must always, including during times of licence suspension, maintain a level of care for stored agricultural products as required by the conditions of their licence.

Warehouse receipts: The federal system provides for paper and electronic, negotiable and non-negotiable single receipts. The issuance of warehouse receipts by state-regulated warehouses is governed by the relevant state's enacted version of UCC Article 7 on documents of title.

Transferability of warehouse receipts: Warehouse receipts are tradable if made out as negotiable. The rules for endorsement and transfer of warehouse receipts are contained in each state's enacted version of Part 5 of UCC Article 7.

Settlement and release of stored goods: Under the USWA, it is an express duty of the warehouse to deliver, without unnecessary delay, the stored goods upon presentation of a valid receipt or request of the owner (if no receipt was issued).

Execution and priority of obligations: After default, the creditor for a loan secured by a warehouse receipt may proceed judicially through state courts or extra-judicially if done in a commercially reasonable manner.

Offenses and penalties: The USWA prescribes two categories of penalties depending on whether non-compliance involves agricultural products or not.

supporting regulations, after an appealable administrative review procedure.¹³¹⁹ There are penalties for issuing warehouse receipts for goods that are not physically present in the licenced warehouse, for goods that have not yet been inspected for quality and condition or for goods that are already the object of another issued warehouse receipt.¹³²⁰

Conclusion

The particularities of the institutional framework of the United States, particularly its allocation of competencies between the federal and state governments, have created a complicated picture of warehouse receipt regulation from the top level. The legal framework regulating agricultural warehouses and warehouse receipts is a complex system where a voluntary federal scheme overlays a mixture of varying state laws.¹³²¹ Agricultural warehouses may choose between being federally regulated or state regulated.¹³²²

At the national level, agricultural warehouses may be regulated under the USWA, enacted in 1916 and substantially revised in 2000.¹³²³ With respect to warehouse licensing and operational requirements, states vary widely.¹³²⁴ Some states closely regulate and supervise warehouses, whereas other states have no requirements whatsoever. Each state's enacted version of the UCC is also relevant for the specifics of issuing and circulating warehouse receipts, including their use as collateral for obtaining agricultural credit.

However, the picture is clearer when analysing the legal framework from the vantage point of the regulated entity, a single warehouse storing agricultural products. If a warehouse chooses to pursue a federal licence for commercial reasons, then the legal framework is complete and straightforward. Regarding warehouse

¹³¹⁹ See *ibid.*, §252.

¹³²⁰ See 7 C.F.R. 735.5; 7 C.F.R. 735.300(b)(2), 735.300(b)(3) and 735.300(b)(5).

¹³²¹ See Kershen, 2004, pp. 6, 7.

¹³²² See e.g., Illinois State Department of Agriculture, Grain Dealer / Grain Warehouse Licence Requirements 1; Kershen, 2004, p. 7.

¹³²³ US Warehouse Act, 2000, codified at 7 U.S.C. §§ 241-256.

¹³²⁴ See Kershen, 2004, p. 8.

regulations, the legal framework includes a comprehensive licensing and oversight institution, detailed licensing requirements, clear obligations, performance guarantees and strong penalties. Regarding warehouse receipts, it provides for single receipts governed largely by a well-developed, state-level commercial law in the UCC.

The United States of America is often viewed as a model for other countries when designing various aspects of agricultural legislation. Although the American legal framework for warehouse regulation and warehouse receipts contains most of the elements commonly regarded as necessary for an effectively functioning system, a few factors can complicate its use as an example for other countries. The first complication is the complexity of the scheme created by the allocation of competences between the federal and state governments. Second, even though voluntary, the American warehouse receipt system benefits from the comparative sophistication of the agricultural sector actors and the availability of market and commercial information. This creates strong commercial incentives for warehouses to buy into and comply with the requirements of the federal scheme for licensing agricultural warehouses. Lastly, early on the American regime benefited from preferential lending policies favouring warehouse receipt collateral, backed by the Federal Reserve Bank; this policy support facilitated the early development of warehousing services and the expansion of credit backed by warehouse receipts.¹³²⁵

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