

*Extraordinary*



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## NATIONAL EXAMINATIONS MANAGEMENT COMMISSION BILL, 2022

## ARRANGEMENT OF CLAUSES

*Clause:*

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2. Governing Board of the Commission
3. Tenure of some members of the Board
4. Resignation, Cessation or removal of some members of the Board

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# A BILL

## FOR

AN ACT TO ESTABLISH NATIONAL EXAMINATIONS MANAGEMENT COMMISSION, TO BE SADDLED WITH THE RESPONSIBILITY OF COORDINATING AND REGULATING ALL FORMS OF O-LEVEL EXAMINATIONS BEING CONDUCTED BY NATIONAL EXAMINATION COUNCIL OF NIGERIA (NECO), NATIONAL BUSINESS AND TECHNICAL EXAMINATIONS BOARD (NABTEB), NATIONAL BOARD FOR ARABIC AND ISLAMIC STUDIES (NBAIS) JOINT ADMISSION & MATRICULATION BOARD (JAMB), INCLUDING GENERAL CERTIFICATE EXAMINATION (GCE) AND ANY OTHER AGENCY OF GOVERNMENT RESPONSIBLE FOR CONDUCTING O-LEVEL EXAMINATIONS IN NIGERIA AND FOR RELATED MATTERS

*Sponsored by Senator Bima, Muhammad Enegi*

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

1 PART I - ESTABLISHMENT OF THE NATIONAL EXAMINATIONS

2 MANAGEMENT COMMISSION AND ITS GOVERNING BOARD.

3 1.-(1) There is established National Examinations Management Establishment  
4 Commission (in this Bill referred to as "the commission"). of the Commission

5 (2) The Commission shall be a corporate body with a perpetual  
6 succession and a common seal, may sue and be sued in its corporate name  
7 and shall operate under the presidency.

8 2.-(1) There is established for the commission a Governing, Board Governing Board  
9 ("in this Bill referred to as "the Board"). Which shall consist of- of the Commission

10 (a) Chairman, who shall be an experienced person(s) as an  
11 Educationist and Education Experts and Administration and its  
12 Management, shall be appointed by the president of the Federal Republic of  
13 Nigeria (FRN);

- 1 (b) A representative of-
- 2 (i) Ministry responsible for Education;
- 3 (ii) Ministry responsible for Finance, budget and National planning;
- 4 (iii) Ministry of Justice;
- 5 (iv) CBN;
- 6 (v) EFCC;
- 7 (vi) NGO/Civil Society Organization; and
- 8 (vii) IGPO Office.

9 (c) The Chairman of the Commission, who shall serve as a member

10 and secretary of the Board.

11 (2) Members of the Board shall not be below the rank of a Director.

12 (3) The supplementary provisions contained in the schedule to this

13 Bill, shall have effect with respect to the proceedings of the board and other

14 Matters.

Tenure of Members  
of the Board

15 **3.-(1)** The Commission and members of the Board, shall hold office

16 for the four "4" years and renewable, subject to satisfactory performances, for

17 further term of four "4" years and no more.

18 (2) The members of the Board shall be paid such remunerations

19 allowances as the President of the FRN, on recommendation of salaries and

20 wages commission, may from time to time determine.

Resignation,  
Cessation or  
removal of some  
members of the  
Board

21 **4.-(1)** The members of the Board may resign the appointment, by

22 notice in writing addressed to the chairman, while the chairman shall address

23 his/her letter of resignation to the President of the FRN.

24 (2) A member of the Board, may cease membership if the member-

25 (a) dies or becomes of unsound mind;

26 (b) becomes bankrupt;

27 (c) is convicted of a felony or of any offence involving dishonesty;

28 (d) is guilty of serious misconduct in relation to the office;

29 (e) in the case of a holding professional qualification, if the person(s)

30 is disqualified or suspended from practicing the profession; or

1 (f) Cease to be a staff of the commission he is representing.

2 (3) A member of the Board may be removed, at any time, from the  
3 office by the president of the "FRN", if the President of the "FRN" is  
4 satisfied that it is not in the interest of the commission or the public that the  
5 member should continue to hold office.

6 PART II - FUNCTIONS OF THE BOARD

7 **5.** The commission shall be responsible for-

Functions of the  
Commission

8 (a) Coordinating and regulating all forms of O-Level  
9 Examinations management agencies of government in Nigeria;

10 (b) Approving projects and programmes of the examination  
11 agencies by the commission;

12 (c) Determining time for conducting the examinations and the time  
13 for releasing the results;

14 (d) Providing guidelines for the conduct of the examinations and  
15 ensure the release of results on time to candidate who perform better;

16 (e) Evaluation of the performance of the examination bodies from  
17 time to time to achieve the core objective;

18 (f) Determining the examination fees payable to the examination  
19 agencies of the commission;

20 (g) Ensuring dates of examinations by the various examination  
21 bodies in order not to affect each other;

22 (h) Ensuring that curriculum usage for the examinations are in line  
23 with the world class base;

24 (i) Performing any other work that may be assigned by the  
25 president of the Federal Republic of Nigeria from time to time; and

26 (j) Doing any other that is incidental to the objectives of the bill.

27 **6.** The Board shall have powers to-

Powers of the  
Board

28 (a) superintended smooth implementation of the functions of the  
29 commission;

30 (b) approve guidelines in which O-Level conducting examination

1 agencies should adopt as policy and implement in order to achieve the desire  
2 result within the Nation;

3 (c) approve appointment, discipline and promotion of staff of the  
4 commission;

5 (d) approve creation of additional departments, divisions and units as  
6 may deem necessary to achieve the objectives of the commission;

7 (e) perform any other function that may be assigned to it by the  
8 President of the "FRN" from time to time; and

9 (f) do other thing that is incidental to the objectives of this Bill.

10 PART III - STAFF OF THE COMMISSION.

Chairman and  
Secretary of the  
Commission

11 7.-(1) There shall be appointed for the commission a chairman, by the  
12 president of the FRN, who shall possess cognate experience as an educationist  
13 and qualification in Education Administration Expert and its Management, for  
14 a period of not less than 10 years.

15 (2) The chairman shall-

16 (a) be the Chief-Executive and accounting officer of the commission  
17 and shall be charged with-

18 (i) matters relating to day-to-day management, and operations of the  
19 commission; and

20 (ii) Determining structure of ranks, for staff of the commission.

21 (b) hold office for a term of four "4" years and renewable, subject to  
22 satisfactory performance, for further term of four "4" years, and no more; and

23 (c) be answerable to the Board.

24 (3) There shall be appointed for the commission, by the Board on the  
25 recommendation of the chairman, a Secretary for the commission, who shall  
26 qualify as a legal practitioner and was so qualified for a period of 10 years.

27 (4) The Secretary shall be-

28 (a) a legal adviser of the commission;

29 (b) a secretary of all the committees to be established by the  
30 management committee; and

1 (c) answerable to the chairman of the commission.

2 **8.-(1)** The staff of the commission other than those, mentioned in  
3 this Bill, shall be employed according to the procedure stipulated by the  
4 Board.

Other staff of  
the Commission

5 (2) The staff can be on permanent or temporary appointment on the  
6 terms which precludes the grants of pension and gratuity.

7 (3) The staff of the commission, who qualifies as a legal  
8 practitioner, within the meaning of legal practitioners Act, shall in addition  
9 to other function, enters appearance to prosecute or defend any civil matters  
10 in any court involving the commission.

11 **9.-(1)** The commission may subject to the provision of this Bill,  
12 with the approval of the Board, make staff regulations, relating generally to  
13 the condition of service in the commission such regulation may provide for  
14 the appointment, promotion, discipline and appeals for the staff of the  
15 commission;

Staff regulations

16 (2) The staff of the commission shall be paid such salary and  
17 allowances as may be determined by the president on recommendation of  
18 the Board.

#### 19 PART VI - STRUCTURE OF THE COMMISSION

20 **10.-(1)** There shall be establish for the commission, such number  
21 of Departments, Divisions, and units as the commission, may with the  
22 approval of the Board deem necessary.

Departments of  
the Commission

23 (2) Each Department shall be headed by a Director who shall be  
24 professionally qualified to hold the office appointed through a competitive  
25 process.

26 (3) Subject to the approval of the Board, of the commission may  
27 create additional departments, divisions and units as it may deem necessary  
28 to achieve the objective of the commission.

29 **11.** The commission shall-

Zonal offices of  
the Commission

30 (a) divide the federation into such number of zones as it may from



	1	time to time, determine for effective organization of the commission; and
	2	(b) Establish in each zone, a zonal office and all states in Nigeria
	3	including FCT-Abuja.
Establishment of managements, and other committees for the Commission	4	<b>12.-(1)</b> There is established for the commission, a management,
	5	committee comprising of all the Directors and the chairman of the commission,
	6	who shall be the chairperson of the committee.
	7	(2) The committee may create additional standing or Ad-Hoc
	8	committees and give them specific function.
	9	PART V - FINANCIAL PROVISIONS
Establishment of fund for the Commission t	10	<b>13.</b> The commission shall establish and maintain a fund, which shall
	11	be paid and credited-
	12	(a) all subventions and budgetary allocation from the Federal
	13	Government;
	14	(b) all sums accruing to the commission by the way of gifts,
	15	endowments, bequests, grants or other social contributions, by person(s) and
	16	organizations;
	17	(c) returns of investments;
	18	(d) foreign donations or aid;
	19	(e) All local donations or aid and assistances; and
	20	(f) All other sums which may from time to time, accrued to the
	21	commission.
Application and management, of the fund	22	<b>14.</b> The commission shall manage and apply its fund, in accordance
	23	with the general guidelines made by the management committees, particularly
	24	on-
	25	(a) general operations of the commission;
	26	(b) cost of payment of allowances to the members of the board;
	27	(c) payment of salaries and other allowances for the staff of the
	28	commission;
	29	(d) maintenance of any property vested in the commission; and
	30	(e) Cost of procurement of goods and consultancy, services for the

Annual Budget  
of the Commission

## Reports

### Procedure and Limitation of suit against the Commission

Service of process

Indemnity of  
members etc.

Acquisition of  
property. Cap, L40  
LFN, 2004

## Regulations

Directives by the President	1	<b>22.</b> The President may give to the commission such, directives
	2	dealing with matters of general policy and maintenance of public safety and
	3	peace in Nigeria.
Power to obtain information	4	<b>23.</b> For purpose of carrying out the functions of the commission under
	5	this Bill, the chairman, or any officer of the commission shall-
	6	(a) have powers of access to any premises or record, within a
	7	reasonable time to obtain information of record of person affected by this Bill;
	8	and
	9	(b) By notice in writing served on person to provide information
	10	required for carrying out the functions of the commission.
Citation	11	<b>24.</b> This Bill is cited as the National Examinations Management
	12	Commission Bill, 2022.

## 1 SCHEDULE

2 *Clause 2(3)*

## 3 SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

4 *Proceedings of the Board*

5 1.-(1) Subject to the Provisions of this Bill and other applicable  
6 laws, the Board may make Standing orders regulating its proceedings.

7 (2) The Board shall meet whenever summoned by the Chairman, or  
8 if required to do so, by at least five '5' members out of '10' ten members of the  
9 Board, and shall meet for a minimum of 4 times in each Fiscal year.

10 (3) The Chairman shall preside over the meetings of the  
11 commission and in his/her absence, the Secretary of the commission, may  
12 act and report back to the Chairman.

13 (4) The quorum of the Board shall be formed by the Chairman or a  
14 person sitting (secretary) in his/her place as chairman and five "5" other  
15 members of the Board or more.

16 *Committees*

17 2.-(1) The Board may appoint committees and sub-committees to  
18 carry out, on its behalf, such functions that Board shall do.

19 (2) The decision of the sub-committee appointed under paragraph 2(1) shall  
20 have no effect until it is approved by the committee and the Board.

21 *Miscellaneous*

22 3.-(1) The Secretary of the Board shall be the custodian of the seal  
23 of the Board.

24 (2) Fixing of the common seal of the commission shall be  
25 authenticated by the signature of the chairman of the Board or some other  
26 person(s) authorized to do so.

27 (3) Any contract or instrument, which if made or executed by a  
28 person(s) not being a corporate body, shall not require to be made under seal,  
29 shall be executed on behalf of the commission by the chairman or any other  
30 person authorized to do so.

1           (4) Where the Board desires to obtain an expert opinion from a person  
2     not being a member of the board, the Board may co-opt such person for such  
3     period the Board may determine but the co-opted person shall not have the right  
4     to vote or to count in forming a quorum.

5           (5) The validity of any proceeding of the Board or of a committee  
6     shall not be adversely affected by any vacancy in the membership of the Board  
7     or committee or by any defect in the appointment of a member of the Board or  
8     committee or by reason that a person not entitled to take part in the proceedings  
9     of the Board or the committee took part.

#### EXPLANATORY MEMORANDUM

This Bill seeks to establish the National Examinations Management Commission, to be saddled with the responsibility of coordinating and regulating all forms of O-level examinations being conducted by National Examination Council of Nigeria (NECO), National Business and Technical Examinations Board (NABTEB), National Board for Arabic and Islamic Studies (NBAIS) Joint Admission & Matriculation Board (JAMB), including General Certificate Examination (GCE) and any other agency of government responsible for conducting o-level examination in Nigeria.

# A BILL

## FOR

AN ACT TO INTRODUCE MEASURES AIMED AGAINST THE TRADE IN COUNTERFEIT GOODS SO AS TO FURTHER PROTECT OWNERS OF TRADEMARKS AND COPYRIGHT UNDER AGAINST THE UNLAWFUL APPLICATION, TO GOODS, OF THE SUBJECT MATTER OF THEIR RESPECTIVE INTELLECTUAL PROPERTY RIGHTS AND AGAINST THE RELEASE OF GOODS OF THAT NATURE (CALLED "COUNTERFEIT GOODS") INTO THE CHANNELS OF COMMERCE AND FOR OTHER MATTERS CONNECTED THEREWITH, 2022

*Sponsored by Senator Ibinkule Amosun*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria, as follows-

- 1           1.-(1) In this Act, unless the context otherwise requires: Interpretation
- 2           "act of dealing in counterfeit goods" means any actor conduct referred to in
- 3           section 2(1 ); (iii);
- 4           "apply to", with reference to any goods, means use upon or in physical or
- 5           other relation to any goods, and, unless clearly inappropriate, includes to
- 6           embody or incorporate in any goods;
- 7           "Complainant" means a person who, in terms of section 3(1), is entitled to
- 8           lay a complaint contemplated in that section and who has laid such a
- 9           complaint; "counterfeiting"-
- 10           (a) means, without the authority of the owner of any intellectual
- 11           property right subsisting in Nigeria in respect of protected goods, the
- 12           manufacturing, producing or making, whether in the Republic or elsewhere,
- 13           of any goods whereby those protected goods are imitated in such manner
- 14           and to such a degree that those other goods are substantially identical copies
- 15           of the protected goods;
- 16           (b) means, without the authority of the owner of any intellectual

1 property right subsisting in Nigeria in respect of protected goods,  
2 manufacturing, producing or making, or applying to goods, whether in Nigeria  
3 or elsewhere, the subject matter of that intellectual property right, or a  
4 colourable imitation hereof so that the other goods are calculated to be  
5 confused with or to be taken as being the protected goods of the said owner or  
6 goods manufactured, produced or made under his or her licence; or

7 (c) where, by a notice under the Merchandise Marks Act, the use of a  
8 particular mark in relation to goods, except such use by a person specified in  
9 the notice, has been prohibited, means, without the authority of the specified  
10 person, making or applying that mark to goods, whether in Nigeria or  
11 elsewhere. However, the relevant act of counterfeiting must also have infringed  
12 the intellectual property right in question; "counterfeit goods" means goods  
13 that are the result of counterfeiting, and includes any means used for purposes  
14 of counterfeiting; "counterfeit goods depot" means a place designated under  
15 section 23 to be a counterfeit goods depot, and includes any place deemed by  
16 section 7(1)(c) to be a counterfeit goods depot; "document" includes a tape  
17 recording, a photograph and any electronic or magnetic or other medium on, in,  
18 or by means or by way of which, images, sound, data or information may be  
19 stored, and "documentary" will be construed accordingly; "exporter" includes  
20 any person who, at the relevant time:

21 (a) is the owner or is in control or possession of any goods exported or  
22 to be exported from Nigeria;

23 (b) Carries the risk for any goods so exported or to be so exported;

24 (c) represents that or acts as if he or she is the exporter or owner of any  
25 goods so exported or to be so exported;

26 (d) actually" takes or attempts to take any goods from Nigeria;

27 (e) has a beneficial interest, in any manner or of any nature  
28 whatsoever, in any goods so exported or to be so exported;

29 (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d)  
30 or (e) and, in relation to imported goods destined for exportation from Nigeria,

1 includes the manufacturer, producer, maker, supplier or shipper of those  
2 goods or any person inside or outside the Nigeria representing or acting on  
3 behalf of such a manufacturer, producer, maker, supplier or shipper.  
4 "Export" and "exportation" will be construed in accordance with the  
5 preceding provisions of these interpretations; "importer" includes any  
6 person who at the relevant time; (a) is the owner or is in control or possession  
7 of any goods imported or to be imported into the Republic;  
8 (b) carries the risk for any goods so imported or to be so imported;  
9 (c) represents that or acts as if he or she is the importer or owner of  
10 any goods so imported or to be so imported;  
11 (d) actually brings or attempts to bring any goods into the  
12 Republic;  
13 (e) has a beneficial interest, in any manner or of any nature  
14 whatsoever, in any goods so imported or to be so imported; acts on behalf of  
15 any person referred to in paragraph (a). (b), (c), (d) or (e) and "import" and  
16 "importation" will be construed accordingly; "inspector" means any person  
17 who under or by virtue of section 22 has been appointed as or designated to  
18 be an inspector for the purposes of this Act, as well as:  
19 (a) any police officer holding the rank of sergeant or a higher rank;  
20 (b) the Comptroller General of Customs and any official  
21 contemplated in section 15(9), in performing their functions in the  
22 circumstances contemplated in section 15(4); "intellectual property right"  
23 (a) means the rights in respect of a trade mark conferred by the Trade Marks  
24 Act (b) means the copyright in any work in terms of the Copyright Act,;  
25 "Minister" means the Minister of Trade and Investment "Owner", in relation  
26 to an intellectual property right, includes a person who has the capacity in  
27 law to enforce the intellectual property right in his or her own name;  
28 "package" or "packaging" means any container, wrapping or outer cover and  
29 the contents thereof, or any bundle or single piece in the case of unpacked  
30 goods, and, when used as a verb, has a corresponding meaning;



1     "prescribed" means prescribed by regulation under this Act; "protected goods"  
2     means-

3             (a) goods featuring, bearing, embodying or incorporating the subject  
4     matter of an intellectual property right with the authority of the owner of that  
5     intellectual property right, or goods to which that subject matter has been  
6     applied by that owner or with his or her authority;

7             (b) any particular class or kind of goods which, in law, may feature,  
8     bear, embody or incorporate the subject matter of an intellectual property right  
9     only with the authority of the owner of that intellectual property right, or to  
10    which that subject matter may in law be applied, only by that owner or with his  
11    or her authority, but which has not yet been manufactured, produced or made,  
12    or to which that subject matter has not yet been applied, with the authority of or  
13    by that owner (whichever is applicable); "this Act" includes any regulation  
14    made under this Act; "tools" includes machinery; and "vehicle" includes any  
15    motor car, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or  
16    other vessel, and any other vehicle, craft or means of conveyance of any kind  
17    whatsoever, whether self-propelled or not, as well as any pack animal. Without  
18    derogating from the meanings of the words "place", "premises" and "vehicle".  
19    and unless clearly inappropriate, any reference in this Act-

20             (a) to any place or premises, must be construed as a reference also to  
21    any freight container, irrespective of its size, at, on or in the place or premises;

22             (b) to any vehicle, must be construed as a reference also to such a  
23    freight container on or in the vehicle.

Dealing in  
counterfeit goods  
prohibited and  
an offence

24             **2.-(1)** Goods that are counterfeit goods may not-

25             (a) be in the possession or under the 'control of any person in the  
26    course of business for the purpose of dealing in those goods;

27             (b) be manufactured, produced or made except for the private and  
28    domestic use of the person by whom the goods were manufactured, produced  
29    or made;

30             (c) be sold, hired out, bartered or exchanged, or be offered or exposed

1 for sale hiring out, barter or exchange;  
2 (d) be exhibited in public for purposes of trade;  
3 (e) be distributed-  
4 (i) for purposes of trade; or  
5 (ii) for any other purpose to such an extent that the owner of an  
6 intellectual property right in respect of any particular protected goods  
7 suffers prejudice;  
8 (f) be imported into or through or exported from or through Nigeria  
9 except if so imported or exported for the private and domestic use of the  
10 importer or exporter, respectively;  
11 (g) in any other manner be disposed of in the course of trade.

12 (2) A person who performs or engages in any actor conduct  
13 prohibited by subsection (1) will be guilty of an offence if-

14 (a) at the time of the actor conduct, the person knew or had reason  
15 to suspect that the goods to which the act or conduct relates, were counterfeit  
16 goods; or

17 (b) the person failed to take all reasonable steps in order to avoid  
18 any act or conduct of the nature contemplated in subsection (1) from being  
19 performed or engaged in with reference to the counterfeit goods.

20 **3.-(1)** Any person who has an interest in protected goods, whether Laying a complaint  
21 as the owner or licensee of an intellectual property right in respect of the  
22 protected goods or as an importer, exporter or distributor thereof (including  
23 the duly authorised agent or representative of any such person), who  
24 reasonably suspects that an offence referred to in section 2(2) has been or is  
25 being committed or is likely to be committed by any person, may lay a  
26 complaint to that effect with any inspector.

27 (2) (a) The complainant must furnish information and particulars,  
28 to the satisfaction of the inspector, to the effect that the goods with reference  
29 to which that offence has been or is being or is likely to be committed, *prima*  
30 *facie* are counterfeit goods;

1 (b) For the purposes of paragraph (a), the complainant may furnish to  
2 the inspector a specimen of the alleged counterfeit goods, or, if not reasonably  
3 possible, sufficient information and particulars from which the essential  
4 physical and any other distinctive features, elements and characteristics of the  
5 alleged counterfeit goods may be ascertained. and sufficient information and  
6 particulars as to the subsistence and extent of the intellectual property right, the  
7 subject matter of which allegedly has been applied to the goods alleged to be  
8 counterfeit goods, and as to the complainant's title to or interest in that right.  
9 and, where the alleged counterfeit goods are calculated to infringe an  
10 intellectual property right that subsists in respect of or has been applied to  
11 protected goods contemplated in paragraph (u) of the definition of "protected  
12 goods" in section 1 (1) also a specimen of the relevant protected goods.

13 (3) In relation to a complaint that has been laid, an inspector must take  
14 appropriate steps in terms of and subject to section 4(1), if reasonably satisfied-

15 (a) that the person having laid the complaint, *prima facie* is a person  
16 who, in terms of subsection (1), is entitled to do so; and

17 (b) that-

18 (i) the goods claimed to be protected goods, *prima facie* are protected  
19 goods; and (ii) the intellectual property right, the subject matter of which is  
20 alleged to have ( c) that the suspicion on which the complaint is based, appears  
21 to be reasonable in the circumstances.

22 (4) The preceding provisions of this section do not preclude an  
23 inspector from taking any appropriate steps in terms of section 4(1) on his or  
24 her own initiative in relation to any act or conduct believed or suspected to be  
25 an act of dealing in counterfeit goods, provided the requirements of that section  
26 are met.

Inspector's  
powers in relation  
to counterfeit  
goods

27 4.-(1) If. Pursuant to any complaint laid with an inspector or on the  
28 strength of any other information at his or her disposal. the inspector has  
29 reasonable -grounds to suspect that an offence contemplated in section 2(2) has  
30 been or is being committed or is likely to be committed, or to believe that an act

1 of dealing in counterfeit goods has taken or is taking place or is likely to take  
2 place, he or she has the power, in accordance with paragraphs (a) to (f) of  
3 section 5(1)-

4 (a) to enter upon or enter any place, premises or vehicle in order to  
5 inspect any relevant goods and seize any suspected counterfeit goods, and  
6 may seize any suspected counterfeit goods found and cause them to be  
7 detained in accordance with this Act, and, where applicable, remove the  
8 suspected counterfeit goods for the purposes of detention;

9 (b) to collect or obtain evidence relating to the suspected  
10 counterfeit goods or the relevant act of dealing in counterfeit goods;

11 (c) to conduct at, on or in such place, premises or vehicle whatever  
12 search may be reasonably necessary for the purposes of paragraph (a) or (b)  
13 (including the search of a person); and

14 (d) to take whatever steps may be reasonably necessary in order to  
15 terminate the relevant act of dealing in counterfeit goods.

16 (2) Subject to section 5(2), the powers conferred on an inspector by  
17 subsection(1) may be exercised only on the authority of a warrant issued  
18 under section 6, and may be exercised wherever the suspected act of dealing  
19 in counterfeit goods has taken or is taking place or is likely to take place or is  
20 suspected on reasonable grounds to have taken place or to be taking place.

21 **5.-(1)** An inspector acting on the authority of and in accordance  
22 with a warrant issued under section 6, may at any reasonable time-

23 (a) enter upon or enter, and inspect, any place, premises or vehicle  
24 at, on or in which goods that are reasonably suspected of being counterfeit  
25 goods, are to be found or on reasonable grounds are suspected to be or to be  
26 manufactured, produced or made, and search such place, premises or  
27 vehicle and any person thereat, thereon or therein, for such goods and for  
28 any other evidence of the alleged or suspected act of dealing in counterfeit  
29 goods. For the purposes of entering, inspecting and searching such a vehicle,  
30 an inspector who is a police officer or who is assisted by a police official may

Extent of  
Inspector's powers  
in relation to  
to counterfeit  
goods

1 stop the vehicle, if necessary by force, wherever found, including on any public  
2 road or at any other public place;

3 (b) take the steps that may be reasonably necessary to terminate the  
4 manufacturing, production or making of counterfeit goods, or any other act of  
5 dealing in counterfeit goods being performed, at, on or in such place, premises  
6 or vehicle, and to prevent the recurrence of any such act in future. Those steps  
7 may include any of the steps contemplated in paragraphs (c), (d) and (e) but do  
8 not include the destruction or alienation of the relevant goods unless authorised  
9 by the court in terms of this Act;

10 (c) seize and detain, and, where applicable, remove for detention all  
11 the goods in question found at, on or in such place, premises or vehicle;

12 (d) seal or seal off any place, premises or vehicle at, on or in which-

13 (i) the goods in question are found, or are manufactured, produced or  
14 made, either wholly or in part;

15 (ii) any trade mark, or any exclusive mark contemplated in paragraph  
16 (c) of the definition of "counterfeiting" in section 1 (1), or any work which is  
17 the subject matter of copyright, is applied to those goods;

18 (iii) the packaging for those goods is prepared;

19 (iv) the packaging of those goods is undertaken;

20 (e) seize and detain, and, where applicable, remove for detention, any  
21 tools which may be used in the manufacturing, production, making or  
22 packaging of those goods or applying a trade mark or that exclusive mark or  
23 such a work to them; and.

24 (f) if he or she reasonably suspects that a person at, on or in such place,  
25 premises or vehicle may furnish any information with reference to any act of  
26 dealing in counterfeit goods-

27 (i) question that person and take down a statement from him or her;

28 (ii) demand and procure from that person any book, document,  
29 article, item or object which in any way may be relevant to the nature, quantity,  
30 location, source or destination of the goods in question, or the identity and

1 address of anyone involved or ostensibly involved as a supplier,  
2 manufacturer, producer, maker, distributor, wholesaler, retailer, importer,  
3 exporter or forwarding agent of, or other dealer in, the goods in question.

4 (2) Subject to subsection (3), an inspector may, during the day,  
5 without a warrant enter upon or enter any place, premises or vehicle after  
6 having identified himself or herself and in accordance with paragraphs (a) to  
7 f subsection (1), exercise the powers of seizure, removal, detention,  
8 collecting evidence and search contemplated in section 4(1)(a), (b) and (c)  
9 (except the power to search any person), as well as the power to take the  
10 steps contemplated in section 4(1)(d), if:

11 (a) the person who is competent to consent to the entry and to such  
12 search, seizure, removal and detention, gives that consent; or

13 (b) the inspector on reasonable ground believes that-

14 (i) the required warrant will be issued to him or her in terms of  
15 section 6 if he or she were to apply for the warrant; and

16 (ii) the delay that would ensue by first obtaining the warrant would  
17 defeat the object or purpose of the entry, search, seizure, removal, detention,  
18 collection of evidence and other steps.

19 (3) Subsection (2)(b) does not serve as authority for, and may not  
20 be applied for the purposes of, entering and searching any private dwelling,  
21 nor for conducting such seizure and removal, the collection of evidence and  
22 the taking of the said other steps therein.

23 (4) Notwithstanding the provisions of subsections (1) and (2):

24 (a) any steps taken by an inspector in accordance with paragraph  
25 (a), (b), (c) or (d) of subsection (1), or like steps taken by him or her by virtue  
26 of subsection (2). will cease to have any legal effect whatsoever unless the  
27 court confirms such steps, either finally or on the application of the inspector  
28 or the relevant complainant (where applicable) brought within 10 court days  
29 of the day on which those steps had been taken;

30 (b) no answer given or statement made by any person to an

1 inspector exercising his or her powers in terms of paragraph U)(i) of subsection  
2 (1) or given or made to any inspector exercising like powers by virtue of  
3 subsection (2), will, if see incriminating, be admissible as evidence against that  
4 person in criminal proceedings instituted in any court against him or her,  
5 except in criminal proceedings where that person is tried for an offence  
6 contemplated in section 18(d)(ii), and then only to the extent that such answer  
7 or statement is relevant to prove the offence charged.

8 (5) The provisions of section 6(4) regarding the manner in which a  
9 search must be conducted. and section 6(5) (b), (6), (7), (8) and (9), will apply  
10 *mutatis mutandis* to an inspector acting by virtue of subsection (2) of this  
11 section.

Provisions relating  
to issue and  
execution of warrant

12 **6.-(1)** The warrant contemplated in section 4(2) read with section 5(1)  
13 will be issued in chambers by any judge of the High Court or by a magistrate  
14 who has jurisdiction in the area where the relevant suspected act of dealing in  
15 counterfeit goods is alleged to have taken or to be taking place or is likely to  
16 take place, and will be issued only if it appears to the judge or magistrate from  
17 information on oath or affirmation that there are reasonable grounds for  
18 believing that an act of dealing in counterfeit goods has taken or is taking place  
19 or is likely to take place, and the inspector seeking the warrant may be asked to  
20 specify which of the powers contemplated in section 4(1) is or are likely to be  
21 exercised.

22 (2) A warrant in terms of this section maybe issued either with  
23 reference to only one separate suspected act of dealing in counterfeit goods or  
24 with reference to any number of such acts, whether any such act involves only  
25 one alleged offender or any number of alleged offenders, and irrespective of  
26 whether such offender or number of offenders is identified specifically by  
27 name or by reference to any particular place or circumstances, and any point in  
28 time.

29 (3) A warrant in terms of this section may be issued on any day and  
30 will be in-

- 1 (a) it has been executed; or
- 2 (b) it is cancelled by the judge or magistrate who issued it, or, if not
- 3 available, by any other judge, or by any other magistrate with like authority
- 4 (as the case may be);
- 5 (c) the expiry of three months from the day of its issue; or
- 6 (d) the purpose for which the warrant was issued, no longer exists,
- 7 whichever
- 8 (4) A warrant issued in terms of this section maybe executed by day
- 9 only, unless the person who has issued the warrant has authorised the
- 10 execution thereof by night at times which must be reasonable, and the entry
- 11 upon or into and search of any place, premises or vehicle specified in the
- 12 warrant, and the search of any person thereat, thereon or therein. must be
- 13 conducted with strict regard to decency and order, including:
- 14 (a) a person's right to, respect for and protection of his or her
- 15 dignity;
- 16 (b) the right of a person to freedom and security of his or her
- 17 person; and
- 18 (c) the right of a person to his or her personal privacy.
- 19 (5) An inspector executing a warrant in terms of this section must
- 20 immediately before commencing with the execution thereof-
- 21 (a) identify himself or herself to the person in control of the place,
- 22 premises or vehicle to be entered upon or entered, if that person is present
- 23 and hand to that person a copy of the warrant, or, if that person is not present
- 24 affix a copy of the warrant to a prominent spot at on or to the place, premises
- 25 or vehicle;
- 26 (b) furnish that person at his or her request with particulars
- 27 regarding the inspector's authority to execute such a warrant. For that
- 28 purpose an inspector may be requested to produce the certificate issued in
- 29 respect of him or hereunder section 22(3).
- 30 (6) An inspector who on the authority of a warrant issued in terms



1 of subsection (1) may enter upon or enter, and search, any place, premises or  
2 vehicle and search any person thereat, thereon or therein, may use such force as  
3 may be reasonably necessary to overcome any resistance to the entry and  
4 search.

5 (7) An inspector may enter upon or enter, and search, any place,  
6 premises or vehicle, and may search any person thereat, thereon or therein,  
7 only if he or she audibly has first demanded access thereto and has notified the  
8 purpose of the entry, unless the inspector on reasonable grounds is of the  
9 opinion that any goods, document, article or item may be destroyed or be lost if  
10 access is first demanded and that purpose notified.

11 (8) If during the execution of a warrant in terms of this section, a  
12 person claims that any goods, document, article or item found at on or in the  
13 place premises or vehicle in question contains privileged information and  
14 refuses the inspection or removal thereof, the inspector executing the warrant,  
15 if of the opinion that the goods, document, article or item may be relevant to  
16 and necessary for the investigation of any complaint or any alleged or  
17 suspected act of dealing in counterfeit goods, must request the registrar of the  
18 High Court having jurisdiction, or that registrar's deputy, to seize and remove  
19 such goods document, article or item for safe custody until the court has made a  
20 ruling on the question whether or not the information in question is privileged.

21 (9) In undertaking any search for and inspection and seizure of  
22 suspected counterfeit goods an inspector may be assisted by the complainant  
23 (if any) or any other knowledgeable person in identifying goods as suspected  
24 counterfeit goods.

Duties of inspector  
following seizure  
of goods

25 7.-(1) An inspector who, in exercising his or her powers in terms of  
26 section 4(1), has seized any suspected counterfeit goods, must-

27 (a) Forthwith seal, clearly identify and categorise these goods and  
28 prepare, in quadruplicate, an inventory of them and cause the person from  
29 whom those goods were seized to check the inventory for correctness, and, if  
30 correct, cause that person to make a certificate to that effect under his or her

1 signature on each original of that inventory. If the seized goods are removed  
2 in terms of paragraph (c), the inspector must endorse that fact under his or  
3 her signature on every original of that inventory, in which case that  
4 inventory will also serve as a receipt;

5 (b) furnish one of the originals of the inventory to the person from  
6 whom the goods were seized and another to the complainant (if any) within  
7 72 hours after the seizure;

8 (c) as soon as possible remove the goods, if transportable, to a  
9 counterfeit goods depot for safe storage, or, if not capable of being removed  
10 or transported, declare the goods to have been seized, and seal off or seal and  
11 lockup those goods or place them under guard at the place where they were  
12 found, and thereupon that place will be deemed to be a counterfeit goods  
13 depot and

14 (d) by written notice inform the following persons of the action  
15 taken by the inspector in terms of section 4(1) and of the address of the  
16 counterfeit goods depot where the seized goods are kept-

17 (i) The person from whom those goods were seized; and

18 (ii) also-

19 (au) the complainant, where the inspector exercised his or her  
20 powers in terms of section 4(1) pursuant to a complaint laid in terms of  
21 section 3(1); or

22 (b) any person who, in relation to those goods, qualifies in terms of  
23 section 3(1) to be a complainant, but who had not yet so laid a complaint at  
24 the time when the inspector exercised those powers on his or her own  
25 initiative as contemplated in section 3(4).

26 (2) In any notice in terms of subsection (J)(d) that is issued-

27 (a) to the complainant, the complainant must be notified of his or  
28 her right by virtue of section 9(1) (a) to lay a criminal charge, not later than  
29 three days after the date of the notice, against the person from whom those  
30 goods were seized (hereafter called the suspect);

1 (b) to a person qualifying to be a complainant, as contemplated in  
2 paragraph (d) (ii)(bb) of subsection (1), the inspector must invite that person  
3 (hereafter called the prospective complainant) to lay a complaint with him or  
4 her, and lay with the Police a criminal charge, not later than three days after the  
5 date of the notice, against the suspect for having performed an act of dealing in  
6 counterfeit goods that is an offence in terms of section 2(2).

7 (3) An inspector may demand from a complainant to disclose any  
8 information which may be relevant to the action that has been taken.

9 (4) (a) Any person prejudiced by a seizure of goods in terms of section  
10 4(1), may at any time apply to the court on notice of motion for a determination  
11 that the seized goods are not counterfeit goods and for an order that they be  
12 returned to him or her.

13 (b) The court may grant or refuse the relief applied for and make such  
14 order as it deems just and appropriate in the circumstances, including an order  
15 as to the payment of damages and costs, if applicable. (c) If deemed just and  
16 appropriate in the circumstances by a court that has refused the order sought. it  
17 may order, where those goods have been seized pursuant to a complaint laid in  
18 terms of section 3(1), that the complainant furnishes security to the applicant in  
19 respect of those goods in an amount and manner determined by the court.

Storage of seized  
goods, and access  
thereto

20 **8.-(1)** Goods that have been seized in terms of section 4(1) must be  
21 stored and kept in safe custody at a counterfeit goods depot until the person in  
22 charge of the depot-

23 (a) is ordered by a competent court in terms of this Act to return  
24 release, destroy or otherwise dispose of those goods as specified in the order; or

25 (b) is directed by the inspector concerned, in the circumstances  
26 provided for in subsection (1)(b) or (2)(u), (b) or (c) of section 9, to release  
27 those goods to the suspect.

28 (2) Goods seized in terms of section 4(1) will be available for  
29 inspection by the complainant, or, as the case may be, prospective complainant  
30 (if any) the suspect and any other interested person at the counterfeit goods

1 depot on any working day during normal office hours.

2 (3) The person in charge of the counterfeit goods depot, on the  
3 request of the complainant or prospective complainant (as the case may be)  
4 or the suspect, must make the relevant seized goods available for testing or  
5 analysis by or on behalf of any such complainant or the suspect if the person  
6 so in charge, having taken into account the nature of such seized goods, the  
7 nature of the tests or analyses to be conducted and the competence and  
8 suitability of the person by whom the tests or analyses are to be conducted is  
9 satisfied that a request in that regard is reasonable.

10 (4) The person in charge of a counterfeit goods depot who is not  
11 willing to allow seized goods under his or her custody to be made available  
12 to the suspect for testing or analysis by any person or by a particular person,  
13 must forthwith refer the matter to the complainant or prospective  
14 complainant (as the case may be) who must either confirm or reverse that  
15 decision within 48 hours.

16 (5) (a) Where any such complainant has confirmed the decision not  
17 to allow the seized goods to be made available to the suspect for testing or  
18 analysis, that decision must be conveyed in writing to the suspect who may  
19 apply to the court for an order rescinding the decision and allowing those  
20 goods to be made so available;

21 (b) The court will grant the application if it finds the decision to be  
22 unreasonable in the circumstances.

23 9.-(1) (a) Where suspected counterfeit goods have been seized by  
24 an inspector in terms of section 4(1), the complainant or prospective  
25 complainant (as the case may be), if he or she wishes to lay a criminal charge  
26 against the suspect with the police for having committed an offence referred  
27 to in section 2) and request that a criminal investigation into the matter be  
28 undertaken, must do so not later than three days after the date of the notice  
29 referred to in section 7(2);

30 (b) If upon the expiry of that three day period. a criminal charge has

Seized goods to  
be released if criminal  
investigation or  
criminal or civil  
proceedings not  
contemplated  
against suspect

1 not so been laid, the relevant seized goods must be released to the suspect  
2 subject to subsection(2).

3 (2) Subject to subsection (3) goods seized in terms of section 4(1)  
4 must be released to the suspect also-

5 (a) (i) if the State fails within 10 working days after the date of the  
6 notice given to the suspect in terms of paragraph (d)(i) of section 7(1) to inform  
7 the suspect by further written notice. of its intention to institute a criminal  
8 prosecution against him or her for having committed an offence referred to in  
9 section 2(2); and (iii) if any person to whom notice has been given in terms of  
10 paragraph (d)(ii) of section 7(1) fails within 10 working days after the date of  
11 that notice to inform the suspect, by further written notice, of the person's  
12 intention to institute against the suspect civil proceedings founded on an act of  
13 dealing in counterfeit goods on the part of the suspect;

14 (b) in any case where the State or that person has so given further  
15 notice, if that criminal prosecution or those civil proceedings (as the case may  
16 be) is or are not instituted within 10 court days after the date of the relevant  
17 further notice; or

18 (c) if the complainant in writing has instructed the inspector to release  
19 those goods to the suspect. However, such an instruction may not be given and  
20 the relevant seized goods may not be so released at any time after a criminal  
21 prosecution involving those goods has been instituted against the suspect; or

22 (d) upon the order of a competent court.

23 (3) (a) For the purpose of effecting the release of goods in terms of  
24 subsection (1)(b) or (2) (a), (b) or (c), the inspector who had seized those goods  
25 in terms of section 4(1) must issue a notice to the person in charge of the  
26 counterfeit goods depot where those goods are detained, directing that the  
27 relevant goods, as specified in the copy of the inventory attached to that notice,  
28 be released to the person specified therein, and at the same time cause a copy of  
29 that notice to be served on the suspect and on the complainant;

30 (b) The person in control of counterfeit goods depot to whom a notice

1 has been issued in accordance with the provisions of paragraph (a), must  
2 release the relevant goods in accordance with that notice, on the fourth day  
3 after the date of that notice, unless a competent court has ordered otherwise.

4 **10.-(1)** without derogating from the powers of a court in any civil  
5 or criminal proceedings relating to counterfeit goods, such a court may  
6 order-

Other orders that  
may be issued by  
court

7 (a) that the goods in question, where they have been found to be  
8 counterfeit goods, be delivered up to the owner of the intellectual property  
9 right the subject matter of which has been unlawfully applied to those goods,  
10 or up to any complainant deriving his or her title from that owner,  
11 irrespective of the outcome of the proceedings;

12 (b) that those goods be released to any person specified in the  
13 order;

14 (c) that the complainant pays damages, in an amount determined  
15 by the court to the person from whom those goods were seized and pays that  
16 person's costs;

17 (d) that the accused or the defendant or respondent (as the case may  
18 be) discloses the source from which those goods, if found to be counterfeit  
19 goods, have been obtained, as well as the identity of the persons involved or  
20 ostensibly involved in the importation, exportation, manufacture,  
21 production or making, and the distribution, of the counterfeit goods and in  
22 the channels of distribution of those goods.

23 (b) If a Court in any civil or criminal proceedings has ordered the  
24 delivery up to any person of goods found to be counterfeit goods derived  
25 from any process of counterfeiting contemplated in paragraph (b) or (c) of  
26 the definition of "counterfeiting" in section 1(1) then, notwithstanding the  
27 provisions of any law, those goods-

28 (a) may not be released into the channels of commerce upon the  
29 mere removal of the subject matter of the intellectual property right that was  
30 unlawfully applied to those goods;

Court may authorise search and attachment pending institution of civil proceedings, to present evidence relevant to infringement of intellectual property right, etc.

1 (b) if imported, may not be exported in an unaltered state, unless the court on  
2 good cause shown, has ordered otherwise.

3 **11.-(1)** The owner of intellectual property right who is aware or has  
4 reasonable grounds to believe that an act of dealing in counterfeit goods has  
5 taken or is taking place or is likely to take place, may, without prejudice to any  
6 other remedy that he or she may have in law, apply ex parte to a judge in  
7 chambers for an order-

8 (a) directing the sheriff or another person designated by the court  
9 (hereafter referred to as a designated person) to enter upon or enter any  
10 specified place or premises accompanied by such other persons as the court  
11 may specify (if any) and there to search for, and, if found, seize and remove  
12 such documents records or other material as the court may specify and any such  
13 goods, alleged to be counterfeit goods, as maybe so specified (hereafter  
14 referred to as subject goods), that are at, on or in such place or premises, and to  
15 attach such documents, records, material and goods;

16 (b) directing the respondent to point out to the sheriff or designated  
17 person all subject goods and to disclose and make available to him or her all  
18 documents and material that are relevant in order to determine whether the  
19 subject goods in question are counterfeit goods or are relevant to any  
20 transactions or dealings in counterfeit goods at, on or in the relevant place or  
21 premises or elsewhere, and to permit the sheriff or designated person to attach  
22 such subject goods, as well as such documents and material (hereafter jointly  
23 referred to as ancillary materials) and remove them for detention in safe  
24 custody;

25 (c) restraining the respondent from-

26 (i) interfering with the state of the subject goods or ancillary materials  
27 during the search, seizure, attachment or removal;

28 (ii) carrying out or continuing with the act of dealing in counterfeit  
29 goods that gave rise to the application;

1 (d) granting such further or alternative relief as the court considers  
2 appropriate.

3 (2) An application in terms of subsection (1 ) will be heard in  
4 camera unless the court is satisfied that the attendance of the proceedings by  
5 members of the public or any class or group of such members will not cause  
6 the applicant to suffer any prejudice or to be prejudiced when seeking to  
7 protect or enforce his or her relevant intellectual property right and that such  
8 attendance, should the court order the relief sought, will not impair or detract  
9 from the efficacy of the order or the execution thereof.

10 (3) The court will not grant an application brought in terms of  
11 subsection (1) unless it considers that the applicant has a prima facie claim  
12 against the respondent for the infringement of an intellectual property right  
13 and that-

14 (a) the applicant's right to discovery of documents in any  
15 proceedings to be instituted by him or her is likely to be frustrated, either by  
16 reason of the nature of the suspected counterfeit goods in relation to which  
17 the application is made or due to other circumstances; or

18 (b) should the normal court procedure be followed or  
19 implemented, the goods relevant to the issues in those proceedings, or  
20 evidence in connection with transactions or dealings with the latter goods,  
21 are likely to be destroyed or to be so altered or placed or be otherwise  
22 disposed of in such manner as to effectively preclude the applicant from  
23 having access to the relevant goods.

24 (4) A court hearing an application so brought, may order that the  
25 relief applied for, be granted subject to the terms and conditions specified in  
26 the order. or that relief be refused, or may make any other order that it deems  
27 just and appropriate in the circumstances.

28 (5) For the purposes of subsection (4), the court may-

29 (a) order that the designated person may rely upon the assistance of  
30 knowledgeable persons, specified in the order, in identifying the subject



1 goods and ancillary materials;

2 (b) order the applicant to furnish security to the respondent in an  
3 appropriate amount equal to a specified percentage of the value of the goods  
4 attached;

5 (c) issue an order restraining the respondent from infringing the  
6 applicant's intellectual property right;

7 (d) issue a rule calling upon the respondent to show cause before or on  
8 a specified day (which must fall on a date within 20 court days of the granting  
9 of the rule) why an interdict restraining the respondent from infringing the  
10 applicant's intellectual property right and any order granting the applicant  
11 further relief, including an order directing the delivery of the subject goods up  
12 to the applicant, should not be granted or confirmed,

13 (e) order that the applicant, should he or she wish to institute  
14 proceedings against the respondent for the infringement of the applicant's  
15 intellectual property right, must do so not later than the date specified in the  
16 order.

17 (6) If the court has not made an order in terms of subsection (5)(e). an  
18 applicant who wishes to institute the proceedings contemplated in that  
19 subsection must do so within 20 court days of the date of the order made in  
20 terms of subsection (4) and whereby his or her application was granted.

Provisions relating  
to execution of  
court order  
authorizing search  
for counterfeit  
goods and evidence  
relevant thereto

21 **12.-(1)** When the court in terms of section 11(4) has issued an order  
22 authorizing a search of any place or premises, the respondent will be entitled to  
23 have his or her attorney present during the search and further execution of the  
24 order at on or in such place or premises, if the presence of that attorney can be  
25 secured with due speed after the designated person has arrived at the place or  
26 premises with a view to conducting that search and further executing that order.

27 (2) The designated person, for the purpose of conducting the search,  
28 must be accompanied by the applicant's attorney who, after service, at the place  
29 or premises where the search is to be conducted, of a copy of the application  
30 and order on the respondent, or, if the respondent is not present, on a

1 responsible person ostensibly in control of such place or premises, must  
2 explain the terms of the order to the respondent or that person and inform  
3 him or her that the respondent is entitled to have his or her attorney present  
4 during the execution of the order provided the presence of the respondent's  
5 attorney is secured with due speed.

6 (3) The sheriff or designated person conducting the search must-

7 (a) prepare an inventory of the subject goods and ancillary  
8 materials attached by him or her on the authority of an order in terms of  
9 section 11 (4) and furnish a copy of the inventory to the applicant and to the  
10 respondent;

11 (b) allow the parties to peruse the ancillary materials that have been  
12 so attached and to make copies thereof or excerpts therefrom; and

13 (c) allow the parties to inspect the subject goods and to have those  
14 goods tested or analysed on their behalf.

15 (4) When a search authorised by an order in terms of section 11 (4)  
16 has been completed the applicant's attorney must, without delay-

17 (a) make a statement under oath or affirmation in-which he or she  
18 reports fully on the conducting of the search and on any other steps taken by  
19 him or her in relation to or pursuant to the search with a view to complying  
20 with the requirements of that order or an order in terms of section 11 (5) and  
21 the requirements imposed by this section, and, where any subject goods or  
22 ancillary materials have been attached on the authority of an order in terms  
23 of section 11 (4), annex to that statement a copy of the inventory prepared in  
24 relation to the relevant subject goods and ancillary materials in compliance  
25 with subsection (3) of this section;

26 (b) cause the original of that statement, together with its annex. to  
27 be filed in the office of the registrar of the court in question and cause a  
28 certified copy thereof to be served on the respondent.

29 13.-(1) Where in any proceedings the claim of a person (hereafter  
30 called the erstwhile applicant) in respect of an infringement of his or her

Court may order  
unsuccessful claimant  
in proceedings for  
infringement of  
intellectual property  
right to pay  
compensation

1 intellectual property right is dismissed the court may order the erstwhile  
2 applicant to pay appropriate compensation to the erstwhile respondent for any  
3 injury or prejudice caused to or suffered by him or her in consequence of any  
4 measures and steps taken in terms of section 11 or 12 on the authority of an  
5 order contemplated in section 11.

6 (2) For the purposes of subsection (1) and section 14:

7 (a) "erstwhile applicant" means the owner of an intellectual property  
8 right who was the successful applicant in any ex parte application brought in  
9 terms of section 11(1); and

10 (b) "erstwhile respondent" means the person against or in relation to  
11 whom relief was sought pursuant to that application.

Court may order  
release of attached  
subject goods and  
ancillary materials  
in certain  
circumstances t

12 **14.** If an erstwhile applicant does not, before the date specified in an  
13 order contemplated in section 11 (5)( e) or within the period referred to in  
14 section 11 (6), whichever is applicable, institute proceedings against the  
15 erstwhile respondent for the infringement of the erstwhile applicant's  
16 intellectual property right, or if, in the case where those proceedings have been  
17 so instituted, the erstwhile applicant's claim has been dismissed by the court,  
18 the court, on the application of the erstwhile respondent or any other interested  
19 person claiming to be entitled to the subject goods and ancillary materials may  
20 order that such goods and materials be released, respectively, to the erstwhile  
21 respondent or to such interested person who has proved his or her entitlement  
22 thereto.

Customs  
authorities'  
powers in relation  
to counterfeit  
goods being  
imported into  
Nigeria

23 **15.-(1)** The owner of an intellectual property right may apply to the  
24 Comptroller General of Customs (hereafter called the Comptroller), to seize  
25 and detain all goods-

26 (a) which are counterfeit goods featuring, bearing, embodying or  
27 incorporating the subject matter of that intellectual property right or to which  
28 the subject matter of that right has been applied;

29 (b) and which are imported into or enter Nigeria during the period  
30 specified in the application. However, that period may not extend beyond the

1 last day of the period for which that intellectual property right subsists.

2 (2) For the purposes of subsection (1), the applicant may furnish to  
3 the Comptroller a specimen of the goods that are protected goods of the  
4 nature contemplated in paragraph (a) of the definition of "protected goods"  
5 in section 1 (1) (if any) and to which the subject matter of his or her relevant  
6 intellectual property right relates and sufficient information and particulars  
7 as to the subsistence and extent of that intellectual property right and as to  
8 his or her title to that right.

9 (3) The Comptroller must consider and deal with an application in  
10 terms of subsection (1) without delay, and must grant the application if  
11 satisfied on reasonable grounds-

12 (a) that the goods claimed to be protected goods, are *prima facie*  
13 protected goods;

14 (b) that the intellectual property right, the subject matter of which  
15 relates to the protected goods, *prima facie* subsists; and

16 (c) that the applicant *prima facie* is the owner of that intellectual  
17 property right.

18 (4) When an application made in terms of subsection (1) has been  
19 granted and notice thereof given in terms of subsection (5), all goods that are  
20 counterfeit goods of the type with reference to which that application was  
21 made (hereafter called the stipulated goods) or suspected on reasonable  
22 grounds to be stipulated goods, and imported into or entering Nigeria from  
23 time to time during the period determined by the Comptroller ( which may  
24 be shorter than the period applied for), may be seized and detained by the  
25 customs authorities in performing their functions subject to the provisions  
26 of subsections (6) and (7) of this section. (5) The Comptroller, by written  
27 notice (issued within a reasonable time after having decided the application)  
28 must notify the applicant whether the application has been granted or  
29 refused, and-

30 (a) if granted, state the period during which any stipulated goods

1 being imported into or entering Nigeria will be made subject to seizure and  
2 become subject to detention under subsection (4); (b) if refused, state the  
3 reasons for the refusal.

4 (6) For the purposes of acting under subsection (4) in relation to goods  
5 that are stipulated goods or suspected on reasonable grounds to be stipulated  
6 goods-

7 (a) any member of the customs authorities will act *mutatis mutandis*  
8 as if he or she were an inspector who, in connection with counterfeit goods or  
9 alleged or suspected counterfeit goods, were exercising the powers  
10 contemplated in section 4(1) on own initiative in terms of section 3(4);

11 (b) the following provisions of this Act will apply *mutatis mutandis* in  
12 relation to any member of the customs authorities, namely-

13 (i) the provisions in accordance with or subject to which the powers  
14 contemplated in section 4(1) may be exercised by an inspector so acting on own  
15 initiative;

16 (ii) the provisions by which any other power or any right function,  
17 duty, obligation, exemption, indemnity or liability is conferred or imposed on  
18 an inspector so acting. However, the Minister, at the request of the Minister of  
19 Finance acting on the recommendation of the Commissioner, may by notice in  
20 the Gazette exempt the members of the customs authorities from any of the  
21 provisions made applicable by this paragraph if satisfied that there are suitable  
22 and appropriate alternative arrangements made by or under the Customs and  
23 Excise Act, that cover the purpose of the provision from which exemption is  
24 sought.

25 (7) The customs authorities will not be obliged to act in terms of  
26 subsection (4) unless the owner of the intellectual property right, the subject  
27 matter of which is alleged to be featured or borne by or incorporated or  
28 embodied in or to have been applied to stipulated goods, furnishes to the  
29 Comptroller security in the manner and amount that the Comptroller may  
30 require to indemnify the customs authorities and their members against any

1 liability that may be incurred pursuant to the seizure and detention of goods  
2 or anything done in relation to goods when acting or purportedly acting  
3 under this section and to cover any expenses that may be incurred in  
4 effecting the seizure and detention of the goods.

5 (8) The provisions of this Act will not be construed so as to render  
6 the customs authorities or any of their members liable for:

7 (a) any failure to detect or seize stipulated goods;

8 (b) the inadvertent release of any such goods; or

9 (c) any action taken in good faith in respect of such goods.

10 **16.-(1)** Subject to section 5(4)(b), any statement taken down or  
11 other documentary evidence procured by an inspector in the course of  
12 exercising any power in terms of section 4(1) may be made available to a  
13 complainant at his or her request. The complainant may make copies of or  
14 extracts from any such statement or documentary evidence and must return  
15 the original statement or document to the inspector.

Evidence and  
presumptions

16 (2) An inspector may be called as a witness by any party to civil or  
17 criminal proceedings concerning counterfeit goods. or by the court,  
18 whenever the inspector conducts the exercise or performance of his or her  
19 powers or duties in terms of section 4(1), 5.6, 7 or 9 or the nature of the  
20 circumstances in or activities with reference to which those powers or duties  
21 were exercised or performed, is in issue or relevant in those proceedings.

22 (3) In any civil proceedings concerning an act of dealing in  
23 counterfeit goods by any person, it will be permissible, if relevant, to present  
24 evidence about that person's conviction on account of an offence founded on  
25 the same act of dealing in counterfeit goods.

26 (4) (a) A statement in the prescribed form, made under oath or  
27 affirmation by an inspector, to the effect that the goods specified under his or  
28 her signature in the inventory attached to that statement, are goods seized by  
29 him or her from a specified person at a specified place and on a specified  
30 date, will, upon production to the court, be admissible in evidence and be

1 sufficient proof of the facts stated therein in any civil or criminal proceedings  
2 concerning counterfeit goods or any act of dealing therein, if relevant to those  
3 proceedings and if the inventory has been prepared by the inspector, and has  
4 been certified to be correct, as required by section 7(1)(a);

5 (b) If a statement has been produced and handed in as evidence in  
6 terms of paragraph (a), the court, in its discretion and notwithstanding the  
7 provisions of that paragraph, may order that the inspector who made that  
8 statement be directed or subpoenaed to appear before the court to give oral  
9 evidence concerning any matter mentioned or dealt within that statement.

10 (5) Where the subsistence of an intellectual property right in respect  
11 of protected goods or any person's title to or interest in such intellectual  
12 property right is in issue in any civil or criminal proceedings concerning  
13 counterfeit goods, the subsistence of, title to or interest in such intellectual  
14 property right, where it is alleged-

15 (a) to encompass the rights in respect of a trade mark as contemplated  
16 in paragraph (a) of the definition of "intellectual property right" in section 1 (1),  
17 may be proved in accordance with the provisions of sections 49,50 and 51 of  
18 the Trade Marks Act,

19 (b) To be copyright in a work, maybe proved in accordance with the  
20 provisions of section 26(1 2) of the Copyright Act, which provisions will apply  
21 *mutatis mutandis*;

22 (c) to be the exclusive right to use a particular mark may be proved by  
23 producing to the court a copy of the Gazette in which that notice was published,  
24 accompanied by a statement under oath or affirmation made by the Minister or  
25 any officer designated by the Minister, which is to the effect that such notice  
26 has not been withdrawn or amended in its essence. However the provisions of  
27 this subsection will not be construed so as to detract from the power of the  
28 court, in relation to any such matter or any aspect thereof-

29 (i) to require oral evidence to be given;

30 (ii) in the case of a High Court, to order that the evidence of a person

1 who resides or is for the time being outside the area of jurisdiction of that  
2 Court, be taken by means of interrogatories.

3 (6) Where any person who conducts business in protected goods  
4 featuring, bearing, incorporating or embodying the subject matter of a  
5 particular intellectual property right is proved to have been found in  
6 possession of suspected counterfeit goods to which the subject matter of the  
7 same intellectual property right has been applied-

8 (a) it will, in any civil proceedings concerning an act of dealing in  
9 counterfeit goods founded on that person's possession of the suspected  
10 counterfeit goods, be presumed, until the contrary is proved, that such  
11 person was in possession of the latter goods for the purpose of dealing  
12 therein if the quantity of those goods is more than that which, in the  
13 circumstances, reasonably may be required for his or her private and  
14 domestic use;

15 (b) the same presumption will, in any criminal proceedings arising  
16 from that person's possession of the suspected counterfeit goods, apply  
17 *mutatis mutandis* unless credible evidence in rebuttal of the fact presumed,  
18 is tendered.

19 17.-(1) any person suffering damage or loss caused by the  
20 wrongful seizure, removal or detention of goods alleged to be counterfeit  
21 goods, or by any action contemplated in 5 section 7(1 ) (a), (b) or (c) or (2)  
22 wrongfully taken by an inspector with reliance on that section read with  
23 section 4(1), or caused during or pursuant to the seizure, removal or  
24 detention of such goods in terms of this Act, will be entitled to claim  
25 compensation for that damage or loss which claim, subject to subsection (2),  
26 will be against the complainant and not against the State, the inspector or the  
27 person in charge of the 10 counterfeit goods depot where those goods are  
28 were detained.

Liability for  
damage or loss  
arising pursuant  
to application  
of Act

29 (2) The State or such inspector or the person in charge of the  
30 relevant counterfeit goods depot as the case may be, will be liable in respect



1 of a claim contemplated in subsection (1) only if:

2 (a) in the seizure or removal of the alleged counterfeit goods, the  
3 inspector, or, in the detention and storage of those goods, that person so in  
4 charge or the inspector (depending on the circumstances), has been grossly  
5 negligent; or

6 (b) the inspector or that person so in charge (as the case may be), in the  
7 seizure, removal, detention or storage of those goods, acted in bad faith.

8 (3) Any reference in paragraphs (a) and (b) of subsection (2) to an  
9 inspector or to a person in charge of a counterfeit goods depot (however  
10 expressed) will be construed so as to include any person acting on the  
11 instruction or under the supervision of the inspector or the person so in charge,  
12 as the case may be.

Miscellaneous  
offences

13 **18.** A person will be guilty of an offence-

14 (a) upon failing to comply with any request, direction, demand or  
15 order made or given by an inspector in accordance with the provisions of this  
16 Act;

17 (b) when obstructing or hindering an inspector in performing his or  
18 her functions under this Act;

19 (c) if that person, without the necessary authority, breaks, damages or  
20 tampers with a seal applied by an inspector in terms of this Act or removes any  
21 goods, documents, articles, items, objects or things sealed or sealed-off by an  
22 inspector or detained or stored at a counterfeit goods depot in terms of this Act;

23 (d) when, if asked in terms of section 5(1) for information or an  
24 explanation relating to a matter within the knowledge of that person, he or she-

25 (i) refuses or fails to give that information or explanation; or

26 (ii) gives information or an explanation knowing it to be false or  
27 misleading.

Penalties

28 **19.**-(1) Any person convicted of an offence referred to in section 2(2),  
29 will be punishable:

30 (a) in the case of a first conviction, with a fine, in respect of each

1 article or item involved in the particular act of dealing in counterfeit goods to  
2 which the offence relates, that may not exceed N5,000,00 per article or item,  
3 or with imprisonment for a period that may not exceed three years, or with  
4 both such a fine and such term of imprisonment;

5 (b) in the case of a second or any subsequent conviction, with a  
6 fine, in respect of each such article or item, that may not exceed N10 000,00  
7 per article or item, or with imprisonment for a period that may not exceed  
8 five years, or with both such a fine and such term of imprisonment.

9 (2) Any person convicted of an offence referred to in section 18,  
10 will be punishable with a fine or imprisonment for a period that may not  
11 exceed six months.

12 (3) (a) A court that has convicted a person of an offence  
13 contemplated in section 2(2) must when considering which penalty to  
14 impose, amongst others take into account any risk to human or animal life,  
15 health or safety or danger to property (whether movable or immovable) that  
16 may arise from the presence or use of the counterfeit goods in question;

17 (b) Without detracting from the discretion that a court in criminal  
18 proceedings has with regard to sentencing, a court that has convicted any  
19 person of an offence referred to in section 2(2) may take into account, in  
20 mitigation of sentence, any evidence to the effect that such person, fully,  
21 truthfully and to the best of his or her ability had disclosed to an inspector  
22 who acted against him or her in terms of section 4(1) or to a member of the  
23 Police Force who investigated that offence, all information and particulars  
24 available to that person in relation to anyone or more, or all, of the following  
25 matters (whichever may have been applicable in the circumstances)-

26 (i) the source from which the counterfeit goods involved in the  
27 commission of the offence, were obtained;

28 (ii) the identity of the persons involved in the importation,  
29 exportation, manufacture, production or making of those counterfeit goods;

30 (iii) the identity and, if reasonably demanded, the addresses or

1 whereabouts of the persons involved in the distribution of those goods;

2 (iv) the channels for the distribution of those goods.

3 (4) (a) The Minister may from time to time by notice in the Gazette  
4 increase the amounts of the fines mentioned in paragraphs (a) and (b) of  
5 subsection (1);

6 (b) That notice must be laid on the table in the National Assembly, for  
7 its consideration and approval, within 14 days after the date on which it is  
8 published in the Gazette, if the National Assembly is then in session, or, if it is  
9 not then in session, within 14 days of the commencement of its next session.

Orders permissible  
following  
convictions of  
person of offence  
contemplated  
in section 2(2)

10 **20.-(1)** Subject to section 10, the court having convicted a person of  
11 an offence contemplated in section 2(2) may declare the counterfeit goods in  
12 question to be forfeited to the State or order that those goods and their  
13 packaging, and, where applicable any tools that were used by or on behalf of  
14 the convicted person for the manufacturing production or making of those or  
15 any other counterfeit goods or for the unlawful application to goods of the  
16 subject matter of any intellectual property right, be destroyed.

17 (2) Any person who submits any counterfeit goods purchased by him  
18 or her (hereafter called the aggrieved person), to an inspector, together with  
19 proof of the price that was paid for those goods, will be entitled to receive  
20 payment of a sum of money equivalent to three times the amount of that paid, in  
21 the following circumstances-

22 (a) The person who had sold those counterfeit goods must have been  
23 convicted of an offence referred to in section 2(2) founded on the sale of those  
24 goods. Alternatively, an order, against the seller, must have been made in terms  
25 of section 10(1)(a) directing that those goods be delivered up to the owner of  
26 the intellectual property right, the subject matter of which was unlawfully  
27 applied to those goods, or up to a complainant deriving his or her title from that  
28 owner;

29 (b) The aggrieved person must have co-operated fully in the  
30 prosecution of the seller for that offence;

1 (c) when the court having so convicted the seller of those goods or  
2 having made an order in terms of section 10(1)( a), has also issued an order  
3 awarding sum of money to the aggrieved person and directing the seller to  
4 pay that award. However, the court must make the latter order if satisfied  
5 that the requirements of paragraphs (a) and (b) have been met.

6 (3) The provisions of subsection (2) will apply and be applied,  
7 *mutatis mutandis*, in relation to and for the benefit of any person who,  
8 otherwise than by way of a transaction of purchase and sale, has acquired, in  
9 consideration for value given by him or her, goods that are counterfeit  
10 goods.

11 **21.** Subject to the Constitution of the Federal Republic of Nigeria,  
12 1999 (as amended 2010), and the Criminal Procedure Act, the provisions of  
13 this Act will not detract from a person's civil or criminal liability, in terms of  
14 any other law, on account of his or her infringement of any intellectual  
15 property right and from the capacity or competence in terms of any law to  
16 institute civil or criminal proceedings in respect of such infringement.

Civil or criminal  
liability under other  
laws and institution  
of civil or criminal  
proceedings there  
under not affected  
by this Act

17 **22.**-(1) the Minister may appoint any fit and proper person as an  
18 inspector for the purposes of this Act.

Minister's power  
to appoint or  
designate inspectors

19 (2) (a) The Minister, by notice in the Gazette, may designate any  
20 specified class or category of persons to be inspectors for the purposes of  
21 this Act;

22 (b) The Minister, in a like manner, may amend or withdraw such a  
23 notice at any time.

24 (3) The Minister or any official acting under the authority of the  
25 Minister, must issue to each of the inspectors contemplated in this section a  
26 certificate in the prescribed form stating that the person in whose name it has  
27 been issued has been appointed or designated an inspector (as the case may  
28 be) in terms of or by virtue of this Act.

29 **23.**-(1) The Minister, by notice in the Gazette, may from time to  
30 time designate any place defined in the notice to be a counterfeit goods depot

Minister's powers  
regarding counterfeit  
goods depots

	1	for the purposes of this Act, and may in a like manner amend or withdraw such a
	2	notice at any time.
	3	(2) The Minister must in respect of a counterfeit goods depot appoint
	4	any fit and proper person as the person in charge of the counterfeit goods depot.
Regulations	5	<b>24.</b> The Minister may make regulations not inconsistent with the
	6	provisions of this Act-
	7	(a) in relation to any matter which, in terms of this Act, may or must be
	8	prescribed;
	9	(b) prescribing any inventory to be prepared or made in terms of this
	10	Act;
	11	(c) that may be necessary or expedient for the proper and effective
	12	control, management and administration of a counterfeit goods depot and the
	13	proper care of the goods detained therein;
	14	(d) in relation to the manner or form in which any application (other
	15	than any application to a court of law) is to be made in terms of this Act, and may
	16	prescribe forms for that purpose; and
	17	(e) in relation to any other administrative or procedural matters that
	18	may be necessary or expedient for the proper and effective administration of
	19	this Act.
Short title	20	<b>25.</b> This Bill may be cited as the Counterfeit Goods Bill, 2022.

## EXPLANATORY MEMORANDUM

This Bill seeks to introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trademarks, copyright and certain marks under the Patent Act against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce for that purpose to prohibit certain acts in relation to counterfeit goods as well as the possession of counterfeit goods in certain circumstances to create offences in that regard and prescribe penalties in relation thereto.

# A BILL

## FOR

AN ACT TO ESTABLISH FEDERAL GOVERNMENT UNITY SCHOOLS TO MAKE PROVISIONS FOR THEIR MANAGEMENT, ADMINISTRATION AND OTHER RELATED MATTERS, 2022

*Sponsored by Senator Muhammad Bima Enegi*

[     ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1            **1.-(a)** There are hereby established, Federal Government Unity  
2            Schools, specified in Schedule 1 to this Bill (hereinafter referred to as "Unity  
3            Schools"), which shall have such powers and exercise such functions as are  
4            conferred on them by this Bill;
- 5            (b) Each Unity School:
  - 6            (i) shall be a body corporate with perpetual succession and a  
7            common seal;
  - 8            (ii) shall have power to acquire and dispose of interests in movable  
9            and immovable property; and
  - 10            (iii) may sue or be sued in its corporate name.
- 11           **2.** The functions of each School shall be to:
  - 12           (a) provide full-time teaching, instruction and training in  
13           secondary school curricular courses;
  - 14           (b) rekindle the vision of the founding fathers of this nation who  
15           came up with the concept of Unity Schools as centers of academic  
16           excellence, national integration, leadership, capacity building and national  
17           unity;
  - 18           (c) influence policy changes that would positively affect the  
19           admission, funding and administration of the Unity Schools;
  - 20           (d) attract policy makers from both the public and private sectors to

Establishment  
of Federal  
Government  
Unity Schools

Functions of  
each Unity School

1 review in general, Secondary School Education in Nigeria and proffer  
2 strategies that would enhance the growth and development of secondary school  
3 education as a foundation for sound academic, moral education and national  
4 economic development;

5 (e) foster private sector participation in the funding of Unity Schools;

6 (f) engage Government at all levels and the private sector in  
7 constructive, positive advocacy, actions and initiatives geared towards  
8 revamping educational standards across our public schools;

9 (g) provide a platform for promoting and advising on the unity of the  
10 nation; and

11 (h) perform such other functions, which in the opinion of the  
12 Committee, in consultation with the Academic Board, may serve to promote  
13 the objectives of the School.

School  
Management  
Committee and  
its functions

14 **3.-(1)** The Management Committee of each School shall consist of the  
15 following:

16 (a) the Principal shall be the Chairman of the Management  
17 Committee;

18 (b) the Academic Secretary;

19 (c) One representative of Traditional Groups;

20 (d) One representative of Religious Groups;

21 (e) One representative of Youth Groups;

22 (f) One retired Director;

23 (g) School Departmental Heads; and

24 (2) for Unity Schools (Special), in addition to the above composition,  
25 there shall be 2 members who are Physically Challenged.

26 (3) The provisions set out in the Second Schedule to this Bill, shall  
27 apply in relation to the Management Committee structure.

28 (4) Nothing in the Bill shall prevent the Management Committee  
29 from making supplementary rules to guide their proceedings provided such  
30 rules are consistent with the provisions of this Bill.

1 (5) The Committee shall have power to:

2 (a) Approve for the School to receive from any student or any other  
3 person attending the School for the purpose of teaching or instruction, such  
4 fees as the Committee may, with the prior approval of the Ministry, from  
5 time to time determine;

6 (b) Provide amenities for and make such other provision for the  
7 welfare of staff of the School;

8 (c) Source for funds for the purpose of development of the School,  
9 in such manner and upon such security, as the Ministry may, from time to  
10 time authorize;

11 (d) Recruit qualified and competent staff for the School;

12 (e) ratify the establishment and maintenance of such, Departments  
13 and other teaching units within the School or extramural departments as may  
14 be recommended by the Academic Board;

15 (2) The power of the Committee to establish further Departments  
16 within the School shall be exercisable by order and not otherwise within the  
17 stipulated guidelines.

18 4.- (1) There shall be established for each School, a Board to be  
19 known as the Academic Board which consisting of the following members:

School Academic  
Board and its  
functions

20 (a) The Vice Principal (Academics) of the School, who shall be the  
21 Chairman;

22 (b) The School Librarian;

23 (c) All Heads of Academic Departments/Units; and

24 (d) Four persons to be elected by the Teaching Staff, from  
25 amongst its members, in which two (2) persons shall be not below the rank  
26 of Head Teacher or its equivalent, and the remaining two (2) persons shall  
27 be non-teaching staff, not below the rank of Deputy Head Teacher or its  
28 equivalent.

29 (2) The Academic Board shall deal with all academic matters and  
30 any other matter of interest to the school or any matter assigned to it by the



1 Committee or the Principal.

2 (3) The Academic Board shall be responsible for:

3 (a) The direction and management of academic matters of the  
4 School;

5 (b) Award of Secondary School Certificates, Prizes, Scholarships and  
6 other Academic Distinctions of the School, to persons who may have pursued  
7 an approved course of study have satisfied all requirements;

8 (c) the programme of Studies and Curricular to be undertaken by the  
9 School;

10 (d) the examination and results of the School;

11 (e) Teaching and Research;

12 (f) Making periodic reports on such academic matters to the  
13 Committee; and

14 (g) Discharging any other functions which the Committee may from  
15 time to time delegate to it.

16 (4) The Provisions of schedule 2 to this Bill shall have effect with  
17 respect to the Board as specified therein.

Students' Affairs,  
Welfare and  
Security Board

18 **5.-(1)** There shall be established for each School, a Board to be known  
19 as the Students' Affairs, Welfare and Security Board which consisting of the  
20 following members:

21 (a) Vice Principal (Administration) as Chairman;

22 (b) Head of students Affairs;

23 (c) All Heads of Academic Departments/Units;

24 (d) Two members of academic staff not below the rank of Senior  
25 Teacher;

26 (e) Two representatives of the Parents from the Parent Teacher  
27 Association (PTA).

28 (2) The Welfare Board shall deal with all welfare matters and any  
29 other matter of interest to the school or any matter assigned to it by the  
30 Committee, or the Principal.

- 1 (3) The Welfare Board shall be responsible for:
- 2 (a). the plan of activities of the School;
- 3 (b) Regulation of admission of students;
- 4 (a) Matter which relates to the welfare and security of students;
- 5 (b) Other matter referred to it by either the Committee management
- 6 of the School;
- 7 (c) Mount exhibitions and displays, designed to foster an
- 8 appreciation of trends in the scope and requirements of Education; and
- 9 (d) Matters which the students wish to refer to the Management
- 10 Committee in the first instance, which may in turn refer the matter to the
- 11 Welfare Board.
- 12 (4) The Provisions of schedule 2 to this Bill shall have effect with
- 13 respect to the Board as specified therein.

14 **6.** Subject to the provisions of this Bill, the Minister may give to

15 the Committee, directives of a general character or relating generally to

16 matters of policy with regard to the exercise by the Committee's functions

17 under this Bill, and it shall be the duty of the Committee to comply with such

18 directives.

Power of the  
Minister over  
Committees

19 **7.-(1)** there shall be a Principal for each School (in this Bill referred

20 to as "the Principal") who shall be appointed by the Ministry of Education, in

21 accordance with the provisions of this clause.

Office of the  
Principal and  
Functions

22 (2) Subject to this Bill and the general control of the Committee,

23 the Principal shall be the Chief Executive of the School and shall be charged

24 with general responsibility for matters relating to the day-to-day

25 management and operations of the School.

26 **8.-(1)** There shall be for each School, two (2) Vice Principals

27 (Academic & Administration).

Office of the  
Vice Principal  
and Functions

28 (2) The Vice Principals shall:

29 (a) Assist the Principal in the performance of his/her functions, as

30 contained in this Bill;

	1	(b) Act through rotation in the place of the Principal when the post is
	2	vacant or if, for any reason, absent or unable to perform his functions; and
	3	(c) Perform such other functions for the Principal or as the School
	4	Management Committee may, from time to time, assign to them.
Other Principal Officers	5	<b>9.</b> There shall be for each School, the following Principal Officers:
	6	(a) The Secretary;
	7	(b) The Bursar; and
	8	(c) The Librarian;
	9	Who shall be appointed by the Committee.
Functions of Secretary	10	<b>10.-</b> (1) The Secretary shall be the Chief Administrative Officer of the
	11	School; and shall:
	12	(a) be responsible to the Principal for the day-to-day general
	13	administrative work and running of the School.
	14	(b) keep all records of staff and students;
	15	(c) conduct and receive all correspondence of Management; and
	16	(d) perform such other duties of as the Principal may, from time to
	17	time direct.
	18	(2) The Secretary shall, in addition to the other duties conferred on
	19	him by or under this Bill, Secretary to Management Committee; Secretary to
	20	Academic and Welfare Boards. In his absence, the Committee may appoint
	21	some other persons in the Registry, to act as Secretary.
Functions of Bursar and Librarian	22	<b>11.-</b> (1) The Bursar shall be the Chief Financial Officer of the School
	23	and be responsible to the Principal for the day-to-day administration and
	24	control of financial affairs of the School.
	25	(2) The School Librarian shall be responsible to the Principal for the
	26	administration of the School Library and co-ordination of the Library services
	27	in the teaching units of the School;
Pension Act Provisions	28	<b>12.</b> Service in each School shall be approved Service for the purposes
	29	of the Pensions Act and accordingly, officers and other persons employed in
	30	each School shall, in respect of their services in the School, be entitled to

1 pensions, gratuities and other retirement benefits as are prescribed there  
 2 under, so however, that, nothing in this Bill, shall prevent the appointment of  
 3 a person to any office, on terms which precludes the grant of a pension and  
 4 gratuity in respect of that office.

5 **13.-(1)** The Committee shall establish and maintain a fund which  
 6 shall be applied towards the promotion of the objectives specified in this  
 7 Bill. Establishment  
of Unity Schools  
Education Fund

8 (2) There shall be paid and credited to the fund established under  
 9 subsection (1) of this clause:

10 (a) Such sums as may, from time to time, be granted to the School  
 11 by the Government of the Federation;

12 (b) All monies raised for the purposes of the School by way of gifts,  
 13 grants-in-aid or testamentary disposition; and

14 (c) All subscriptions, fees and charges for services rendered by the  
 15 School and all other sums that may accrue to the School from any source.

16 (3) The Committee shall submit to the Minister, not later than 3  
 17 months before the end of each financial year or at least, at such other time as  
 18 he may direct, an estimate of its revenue and expenditure for the succeeding  
 19 financial year.

20 **14.-(1)** The School may accept gifts of land, money or other  
 21 property, upon such terms and conditions, if any, as may be specified by the  
 22 person making the gift; and Power to accept  
gifts

23 (2) The School shall not accept any gift if the conditions attached  
 24 by the person making the gift are inconsistent with the functions of the  
 25 School.

26 **15.** The Committee shall keep proper accounts of its receipts,  
 27 payments, assets and liabilities, and shall, in respect of each year, cause the  
 28 accounts to be audited. Accounts

29 **16.** The Committee shall, as soon as it may be possible, after the  
 30 expiration of each financial year, prepare and submit to the Minister a report Audit

	1	of its activities during the immediate preceding financial year and shall include
	2	in the report, a copy of the audited accounts of the School, for that year and of
	3	the Auditor's report on the accounts.
Offices and Premises	4	<b>17.</b> For the purpose of providing offices and premises necessary for
	5	the performance of its functions, the Committee may:
	6	(a) Purchase any interest in, or lease any land; and
	7	(b) Build, equip and maintain offices and premises.
Discipline of Students	8	<b>18.</b> -(1) The Committee may make rules to conduct enquiries into
	9	alleged breaches of discipline (including lack of diligence) by students and
	10	such rules may make different provisions for different circumstances;
	11	(2) The rules shall provide for the procedure and rules of evidence to
	12	be followed at enquiries under this clause;
	13	(3) Subject to the provisions of sub-clause (1) of this clause, where it
	14	is proved during the enquiry that any student of the School has been found
	15	culpable or guilty of misconduct; the Principal may, without prejudice to any
	16	other disciplinary powers conferred on him by this Bill or any regulations made
	17	thereunder, direct that the:
	18	(a) student shall not, during such period as may be specified in the
	19	direction, participate in such activities of the School, or make use of such
	20	facilities of the School, as he may specify;
	21	(b) activities of the student shall, during such period as may be
	22	specified in the directions, be restricted in such manner as may be so specified;
	23	(c) student be suspended for such period as may be specified in the
	24	direction; or
	25	(d) student shall be expelled from the School.
	26	(4) Where the Principal refuses to apply any disciplinary measures,
	27	the Committee may, either directly or through some other staff, apply such
	28	disciplinary actions as are specified in subclause3 (a-d) of this clause, to any
	29	student of the School who is guilty of misconduct.
	30	(5) Where a direction is given under subclause3(c) or (d) of this

1 clause, in respect of any student, the student may, within 21 days from the  
 2 date of the letter communicating the decision to him, appeal from the  
 3 decision, to the Committee, and where such an appeal is brought, the  
 4 Committee shall, after causing such inquiry to be made in the matter as the  
 5 Committee considers just, either confirm or set aside the decision or modify  
 6 it in such manner as the Committee may think fit.

7 (6) The fact that an appeal from a decision is brought in pursuance  
 8 of the last foregoing subclause, shall not affect the operation of the decision  
 9 while the appeal is pending, except the Committee directs otherwise.

10 (7) The Principal may delegate his powers under this section to a  
 11 Disciplinary Committee, consisting of such members of the School, as he  
 12 may nominate.

13 (8) Nothing in this clause shall be construed as preventing,  
 14 restricting or terminating a student's activities at the School, otherwise than,  
 15 on the ground of misconduct or cultism.

16 (9) A direction under subclause (3) (a) of this clause may be  
 17 combined with a direction under subclause (3) (b) of this clause.

18 (10) In all cases under this clause, the decision of the Committee  
 19 shall be final, unless reversed by the Minister, on appeal by the student.

20 **19.** In this Bill , unless the context otherwise requires:

Interpretation

21 "Board" means the Academic and Welfare Boards established pursuant to  
 22 Clauses 4 & 5 respectively;

23 "Committee "means the School Management Committee established  
 24 pursuant to Clause 3 of this Bill;

25 "Chairman" means the Chairman of the Council;

26 "Function" includes powers and duties;

27 "Minister" means the Minister charged with the responsibility for matters  
 28 relating to Education;

29 "Member" means a member of the Council, including the Chairman.

30 "School" means any of the Federal Government Unity Secondary Schools

	1	specified in Schedule 1 to this Bill; and
	2	"Schools" shall be construed accordingly;
	3	"Principal" means the Principal of a School appointed under Clause 7 of this
	4	Bill.
Short title	5	<b>20.</b> This Bill may be cited as the Federal Government Unity
	6	Secondary Schools Bill, 2022.
	7	SCHEDULE 1
	8	(1) Federal Government Colleges:
	9	SCHEDULE 2
	10	<i>Section 2</i>
	11	SUPPLEMENTARY PROVISIONS RELATING TO THE COMMITTEE, ETC
	12	TERMS OF SERVICE
	13	<i>Remuneration of Committee Members</i>
	14	1. There may be paid to the members of the Committee or any
	15	Committee, such remuneration and allowances as may, from time to time be
	16	determined by the Minister.
	17	2. The Committee shall make rules/regulations for the effective
	18	running of the school.
	19	3. The Committee may act, notwithstanding any vacancy in its
	20	membership or any defect in the appointment of a member or the absence of a
	21	member.
	22	<i>Proceedings</i>
	23	4.-(a) The Committee shall meet for the conduct of business in the
	24	School at such times that it may appoint once in every three months;
	25	(b) The Chairman may, at any time, and shall, at the request in writing
	26	of not less than 2/3 members, convene a meeting of the Committee;
	27	(c) At any meeting of the Committee, the Chairman shall preside; but
	28	in his absence, members present shall elect one of their members to preside at
	29	the meeting;
	30	(d) Where the Committee desires to obtain the advice of any person on

1 any particular matter, it may co-opt persons who are not members of the  
2 Committee, but persons co-opted shall not be entitled to vote at a meeting of  
3 the Committee;

4 (e) The quorum of the Council shall be simple majority of the total  
5 members of the Council;

6 (f) Decisions of the Committee shall be made on approval by a  
7 simple majority of members present at the meeting.

8 *Miscellaneous*

9 5.-(a) The fixing of the seal of the School shall be authenticated by  
10 the signature of the Principal and some other members of the Committee,  
11 authorized generally or specially by the Committee to act for that purpose;

12 (b) Any contract or instrument which, if made executed by a  
13 person other than a body corporate, would not be required to be under seal,  
14 may be made and executed on behalf of the School by any person, generally  
15 or specially authorized to act for that purpose, by the Committee;

16 (c) Any document purporting to be duly executed under the seal of  
17 the School, shall be received in evidence and shall, unless the contrary is  
18 proved, be presumed to be so executed;

EXPLANATORY NOTE

*(This note does not form part of the above Bill but is intended  
to explain its purpose)*

This Bill seeks to establish the Federal Government Unity Secondary Schools, listed in Schedule 1 to the Bill. The functions of each School, amongst other things are:

(a) To provide full-time courses of teaching, instruction and training in Secondary School Curricular;

(b) Carry out research in the development and adaptation of techniques as the Committee may, from time to time, determine.

(c) Engage in community services, as may be appropriate.





# A BILL

## FOR

AN ACT TO ESTABLISH THE NATIONAL SOCIAL SECURITY COMMISSION (NASSCOM) FOR THE REGULATION, MANAGEMENT AND ADMINISTRATION OF SOCIAL SECURITY BENEFITS AND SERVICES, AND OTHER RELATED MATTERS, 2022

*Sponsored by Senator Ovie Omo-Agege*

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

### 1 PART I: OBJECTIVES OF THE BILL

2 1. The objectives of this Bill are to- Objectives

3 (1) provide a comprehensive legal and governance framework for  
4 the proper administration and management of an inclusive, integrated,  
5 preventive, promotive and transformative national social security  
6 protection system that offers and provides sustainable and adjustable  
7 periodic benefits and grants to eligible Nigerian citizens who face  
8 improvident conditions and contingencies that are within the scope of the  
9 Social Security (Minimum Standards) Convention, 1952 (No. 102) of the  
10 International Labour Organisation (ILO), and particularly contingencies  
11 arising from-

12 (i) medical care of a preventive or curative nature, including any  
13 morbid condition of whatever cause, pregnancy and confinement unrelated  
14 to crime, and their consequences;

15 (ii) sickness, including incapacity to work resulting from a morbid  
16 condition and involving suspension of historical, ascertained and verifiable  
17 earnings;

18 (iii) unemployment, including suspension of historical,  
19 ascertained and verifiable earnings due to inability to obtain suitable formal

1 and informal employment by a capable, employable and fit and proper citizen  
2 who is available for work;

3 (iv) old age, and this applies exclusively to any citizen who is-

4 (a) at least 70 (seventy) years of age,

5 (b) not engaged in any gainful activity, employment and or not a  
6 beneficiary of any form of retirement benefit, or

7 (c) earning above a prescribed threshold of income;

8 (v) broken or unsustainable family maintenance, which applies  
9 exclusively to a parent or guardian's inability to undertake his or her  
10 responsibility to maintain a child by failing to provide food, clothing, shelter,  
11 medical care and or funding for the educational training of the child until the  
12 child is 18 years of age;

13 (vi) excessive maternity burdens, which applies exclusively to  
14 unfunded or poorly funded pregnancy and related confinement and their  
15 consequences, leading to suspension of lawful and ascertained historical  
16 earnings;

17 (vii) invalidity, which applies exclusively to include inability to  
18 engage in any gainful activity due permanent or persistent inability after  
19 exhaustion of sickness benefit; and

20 (viii) survivors, which applies exclusively to loss of breadwinner  
21 support suffered by children who are below the age of 18 years and widows  
22 who are incapable of self-support due to the death of their breadwinner.

23 (2) to establish a robust policy support and legal platform for social  
24 security governance in Nigeria;

25 (3) to emplace an empathetic system for managing vulnerable citizens  
26 in the categories identified in Clause 1(1) of this Bill to promote an inclusive  
27 society that regards the dignity of all by supporting the vulnerable in  
28 sustainable ways to contribute, as much as possible, to national human  
29 development, economic productivity, social participation, peace and cohesion,  
30 and inclusive growth;

1 (4) provide an equitable system for the coordination,  
 2 implementation of social security interventions by adopting a systematic  
 3 and harmonized mechanism to identify beneficiaries, exchange information  
 4 with social systems and monitor societal impact;

5 (5) create, keep and maintain an up-to-date national database,  
 6 databank and statistics of vulnerable persons and groups in support of  
 7 governmental, inter-governmental and non-governmental interventions in  
 8 social security management and administration;

9 (6) establish and maintain an efficient mechanism for the  
 10 regulation management and administration of social security protection  
 11 services at the national and subnational level;

12 (7) emplace a robust, efficient, transparent, sustainable and  
 13 predictable national social security protection funding system; and

14 (8) do such other things that are required to carry out the function of the  
 15 Commission created in Clause 2 of this Bill.

## 16 PART II: ESTABLISHMENT OF THE NATIONAL SOCIAL SECURITY

### 17 COMMISSION, POWERS, FUNCTIONS, ETC

18 **2.** There is established a body to be known as the National Social  
 19 Security Commission ("NASSCOM") (in this Bill referred to as "the  
 20 Commission") which shall-

Establishment  
of the National  
Social Security  
Commission

21 (1) be constituted in accordance with this Bill,  
 22 (2) have such functions as are conferred on it by this Bill, and  
 23 (3) be under the overall control of the President in the discharge of  
 24 its statutory duties.

25 **3.** The Commission-

Nature and Powers  
of the Commission

26 (1) shall be a body corporate with perpetual succession and a  
 27 common seal;

28 (2) may sue and be sued in its corporate name;

29 (3) shall, for the purposes of its functions, have power to acquire,  
 30 hold or dispose of property (whether moveable or immovable);

1 (4) shall have power to enter into contracts;

2 (5) shall have power to delegate any of its functions, subject to  
3 approval by the President;

4 (6) shall have power to appoint and maintain, as its officers,  
5 employees, investigators, prosecutors, experts and other persons with  
6 qualifications, experience, and skills in fields that are relevant to its functions,  
7 to perform such duties as may be necessary from time to time;

8 (7) shall have power to enforce compliance with this Bill;

9 (8) shall have the power to initiate criminal proceedings for breach of  
10 the provisions of this Bill;

11 (9) shall have all such powers that are necessary for or incidental to  
12 the performance of its functions under this Bill; and

13 (10) shall have the power to liaise with the International Labour  
14 Organisation (ILO), International Social Security Association (ISSA), United  
15 Nations International Children's Emergency Fund (UNICEF), and other  
16 relevant international bodies on the implementation of global best practice on  
17 social security management and administration in the Federation.

Functions of  
the Commission

18 **4. The Commission shall-**

19 (1) determine the beneficiaries of social security benefits across the  
20 Federation, taking into consideration available resources, equity, severity of  
21 ascertained improvident conditions and contingencies, and such other factors  
22 that will promote peace, unity and national security through the national social  
23 security scheme;

24 (2) determine, administer and monitor social security benefits, grants  
25 and incentives to persons with improvident conditions and contingencies  
26 arising from-

27 (i) medical care of a preventive or curative nature, including any  
28 morbid condition of whatever cause, pregnancy and confinement unrelated to  
29 crime, and their consequences;

30 (ii) sickness, including incapacity to work resulting from a morbid

1 condition and involving suspension of historical, ascertained and verifiable  
2 earnings;

3 (iii) unemployment, including suspension of historical,  
4 ascertained and verifiable earnings due to inability to obtain suitable formal  
5 and informal employment by a capable, employable and fit and proper  
6 citizen who is available for work;

7 (iv) old age, and this applies exclusively to any eligible person who  
8 is-

9 (a) at least 70 (seventy) years of age,

10 (b) not engaged in any gainful activity, or

11 (c) earning above a threshold prescribed by the Commission;

12 (v) broken or unsustainable family maintenance, which applies  
13 exclusively to a parent or guardian's inability to undertake his or her  
14 responsibility to maintain a child by failing to provide food, clothing,  
15 shelter, medical care and or funding for the educational training of the child  
16 until the child is 18 years of age;

17 (vi) excessive maternity burdens, which applies exclusively to  
18 unfunded or poorly funded pregnancy and related confinement and their  
19 consequences, leading to suspension of lawful and ascertained historical  
20 earnings;

21 (vii) invalidity, which applies exclusively to include inability to  
22 engage in any gainful activity due permanent or persistent inability after  
23 exhaustion of sickness benefit;

24 (viii) the death of the breadwinner of a family, which applies  
25 exclusively to the loss of breadwinner support suffered by children who are  
26 below the age of 18 years and widows who are incapable of self-support due  
27 to the death of their breadwinner; and

28 (ix) victims of social violence and internally displaced persons.

29 (3) build, organise and keep a secured national social security  
30 database, databank and registry which shall contain the names and identities

1 of all beneficiaries of social security payments made by the Commission.

2 (4) undertake regular comprehensive studies and give appropriate  
3 advice to eligible persons on the most effective ways of participating in the  
4 social security schemes covered by this Bill;

5 (5) design and organise counselling and rehabilitation programmes  
6 for victims of social risks;

7 (6) conduct monitoring and evaluation programmes on the impact of  
8 social security programmes and services for the improvident, vulnerable and  
9 victims of protection risks;

10 (7) provide grants to eligible citizens affected by improvidence  
11 resulting from natural disasters, warlike conditions, displacements and related  
12 conditions;

13 (8) promote innovative employment solutions to national  
14 unemployment challenges; and

15 (9) formulate policies towards implementation of an equitable,  
16 empathetic and inclusive national social security protection management and  
17 administration system;

18 (10) design and implement integrated national social security  
19 protection delivery services, projects and programmes;

20 (11) design, organise, and assign unique national social security  
21 identity or identification numbers to all Nigerian citizens who are verified by  
22 the Commission to be eligible and duly registered for that purpose under this  
23 Bill;

24 (12) formulate policies for a fairer distribution of national resources  
25 and social benefits through skills and human capital development, assets  
26 building and financial services;

27 (13) facilitate cooperation across Ministries, Department and  
28 Agencies of the Federal Government and sub-national Government agencies  
29 through the development and operationalization of clear institutional  
30 arrangements for social security management and administration;

1 (14) develop integrated national action plans to provide the basis  
2 for work plans for specific social security protection policy targets and  
3 programmes;

4 (15) establish, manage and invest part of the Fund for efficient  
5 social security management and administration in the Federation;

6 (16) conduct regular actuarial valuation on the social security  
7 scheme for its long-term sustainability;

8 (17) take actions to utilise the social security scheme to actively  
9 accelerate and sustain pro-poor growth, greater equity, inclusive economic  
10 growth, poverty reduction, social cohesion and peace, and human capital  
11 development in the Federation;

12 (18) design, develop and activate processes, instruments and  
13 programmes to advance comprehensive sets of social protection policy  
14 measure and address unique vulnerabilities affecting different classes and  
15 groups in the Federation;

16 (19) provide succour and assistance for citizens resident or living  
17 in ungoverned, minimally governed or poorly governed spaces by taking  
18 effective steps to reduce their exposure to social risks, vulnerabilities and  
19 social protection violation risks; and

20 (20) undertake any other function that may be necessary to  
21 facilitate the attainment of the objectives of this Bill.

22 PART III: ESTABLISHMENT OF THE BOARD OF THE COMMISSION,  
23 FUNCTIONS AND POWERS, MEMBERSHIP, ETC

24 5. There is hereby established for the Commission, a body to be  
25 known as the Nigerian Social Security Commission Board ("NASSCOM-  
26 B") (in this Bill referred to as "the Board").

Establishment  
of the Board

27 6. Subject to provisions of this Bill, the Board shall have the sole  
28 power to manage the Commission and have general control of the Fund and  
29 investments of sums forming part of the Fund.

30 7. The Board shall-



	1	(a) be a body corporate with perpetual succession and a common seal,
	2	and may sue and be sued in its corporate name; and
	3	(b) for the purpose of discharging its functions under this Bill, have
	4	power-
	5	(i) to acquire, hold and alienate property, and
	6	(ii) to enter into any contract or other transactions.
Functions and Powers of the Board	7	<b>8.</b> The Board shall be responsible for-
	8	(1) the general administration of the Commission;
	9	(2) the general management of the Fund and the investment of sums
	10	forming part of the Fund;
	11	(3) the payment of various benefits provided under this Bill to eligible
	12	and entitled persons; and
	13	(4) the general administration of this Bill and regulations made
	14	thereunder.
	15	<b>9.</b> The Board shall have power to carry out such activities as provided
	16	in the Bill and as may appear to the Board to be incidental or conducive to the
	17	attainment of the objectives of this Bill.
Membership of the Board, Nature of Membership and Appointment	18	<b>10.</b> The Board shall consist of the following members-
	19	(1) a Chairman, who shall-
	20	(i) be a distinguished Nigerian with unblemished reputation;
	21	(ii) chair the meetings of the Board; and
	22	(iii) receive Annual Audited and Actuarial Reports of the
	23	Commission and transmit them to the President.
	24	(2) a Director General who shall -
	25	(i) be the Chief Executive and Accounting Officer of the
	26	Commission;
	27	(ii) subject to the general control of the Board, be responsible for the
	28	day-to-day administration of the affairs of Commission and the Board;
	29	(iii) keep the financial records and all such other statutory and non-
	30	statutory records of the Commission; and

1 (iv) possess requisite academic and professional qualifications and  
2 at least 15 years cognate professional experience in management.

3 (3) 4 (four) Executive Directors;

4 (4) 1 (one) ex-officio member, each representing the-

5 (i) Federal Ministry in charge of Justice;

6 (ii) Federal Ministry in charge of Finance;

7 (iii) Federal Ministry in charge of Health;

8 (iv) Federal Ministry in charge of Education;

9 (v) Federal Ministry in charge of Internal Affairs;

10 (vi) Federal Ministry in charge of Labour, Employment and or  
11 Productivity;

12 (vii) Federal Ministry in charge of Sports and or Youth  
13 Development;

14 (viii) Federal Ministry in charge of Women and or Humanitarian  
15 Affairs;

16 (ix) Nigerian Bureau of Statistics;

17 (x) Central Bank of Nigeria;

18 (xi) Nigerian Employees Consultative Association; and

19 (xii) the Nigeria Labour Congress.

20 **11.** The members of the Board, other than the Director General and  
21 Executive Directors, shall be part-time members.

22 **12.** The Chairman and all members of the Board shall be appointed  
23 by the President, and the appointment of the Chairman, Director General  
24 and Executive Directors shall be subject to confirmation by the Senate.

25 **13.** The positions of the Chairman, Director General and Executive  
26 Directors shall be occupied by representation of the 6 (six) geopolitical  
27 zones of the Federation.

28 **14.** The supplementary provisions set out in the Schedule to this  
29 Bill shall have effect with respect to the proceedings of the Board and other  
30 matters contained therein.

Tenure of Office  
of Members of  
the Board

1                   **15.** The members of the Board shall hold office for a term of 5 years  
2                   and shall be eligible for re-appointment by the President for one further term of  
3                   5 years, and no more.

4                   **16.** Subject to the provisions of this Bill and to the exclusion of the  
5                   ex-officio members listed in Clause 10(4) of this Bill, a member of the Board  
6                   appointed under Clause 10(1), (2) and (3) shall hold office for a term of 5 years  
7                   from the date of his appointment and shall be eligible for reappointment for a  
8                   further period of 5 years.

9                   **17.** A member of the Board may resign his appointment by a notice in  
10                  writing under his hand, addressed to the President.

Cessation of  
Board Membership

11                  **18.** A member of the Board shall cease to hold office if-

12                  (1) he becomes of unsound mind;

13                  (2) he becomes bankrupt or makes an arrangement or compromise  
14                  with his creditors;

15                  (3) he is convicted of a felony or of any offence involving dishonesty;

16                  (4) he is guilty of serious misconduct in relation to his duties.

Removal of Board  
Members from  
Office

17                  **19.** Notwithstanding the provision of Clauses 15 and 16 and subject  
18                  to Clause 18 of this Bill respectively, the Chairman, Director General, an  
19                  Executive Director or an ex-officio member of the Board may be removed from  
20                  office by the President if he is satisfied that it is in the best interest of the Board  
21                  and the public to do so.

Vacancy in the  
Board

22                  **20.** Where a vacancy occurs in the membership of the Board, the  
23                  President shall, without recourse to the Senate for confirmation, appoint an  
24                  interim successor who represents the same geo-political interest to hold office  
25                  for the remainder of the term of office of his predecessor.

26                  PART IV: OFFICES OF THE COMMISSION AND ACQUISITION OF PROPERTY

27                  **21.** The Head Office of the Commission shall be in Abuja.

28                  **22.** The Commission shall establish 1 (one) Zonal Office in each of  
29                  the 6 (six) zones of the Federation and 1 (one) office in each State of the  
30                  Federation and the Federal Capital Territory; and may establish 1 (one) office

1 in every Local Government Area or Area Council in the Federation.

2 **23.** For the purposes of providing offices and premises necessary  
3 for the performance of its functions under this Bill, the Commission may,  
4 subject to the Land Use Act-

5 (1) purchase or take on lease any interest in land, or other property;

6 (2) construct offices and premises and equip and maintain same;

7 (3) construct and maintain shelters and buildings as safety nets for  
8 the vulnerable, displaced, sick and improvident and all such related groups;

9 (4) build workshops for skills acquisition and acquire lands for  
10 agricultural extension purposes; and

11 (5) acquire such other property, and all such related estates to  
12 execute its social security mandate.

13 **24.** The Commission may, subject to the Land Use Act, sell or lease  
14 out any office or premises held by it, which office or premises is no longer  
15 required for the performance of its functions under this Act.

16 **PART V: STAFF OF THE COMMISSION**

17 **25.** There is established for the Commission a secretariat which  
18 shall be headed by a Secretary appointed by the Board. Secretary of the  
Commission

19 **26.** The Secretary shall be a person who is qualified to be the  
20 secretary of a public company under the Companies and Allied Matters Act,  
21 2020.

22 **27.** The Secretary shall-

23 (a) be appointed for a single term of 5 years;

24 (b) be responsible for the administration of the Commission's  
25 secretariat;

26 (c) be subject to the supervision and control of the Director General  
27 and the Board in all his duties and responsibilities;

28 (d) be in charge of the Commission's legal department;

29 (e) subject to the directions of the Board, arrange the business of  
30 the meetings of the Board, conduct the correspondence of the Board and

1 perform such other functions as the Director General or the Board may, from  
2 time to time, direct;

3 (f) issue notices of the meetings of the Board on the advice of the  
4 Director General;

5 (g) keep the books, common seal, correspondences and records of the  
6 Board in safe custody on behalf of the Director General;

7 (h) take the minutes of the Board and executive management  
8 meetings; and

9 (i) perform all other duties as may be assigned from time to time by  
10 the board and the Director General.

Other staff of  
the Commission

11 **28.** The Board may appoint such other qualified persons as the  
12 Commission's staff as it deems fit to assist the Commission in the performance  
13 of its functions and realization of its objectives under this Bill.

14 **29.** The staff of the Commission appointed under Clause 28 of this  
15 Bill, shall be appointed upon such contractual terms and conditions of service  
16 (including terms and conditions as to remuneration, allowances, pensions,  
17 gratuities and other benefits) as the Board may determine after consultation  
18 with the Federal Civil Service Commission and approval of the President on  
19 the advice of the Revenue Mobilisation Allocation and Fiscal Commission  
20 (RMAFC) established under Section 153(1) of the Constitution.

21 **30.** The Commission may make rules, regulations and policies  
22 relating to the conditions of service of its employees, and without prejudice to  
23 the generality of the foregoing, may provide for:

24 (i) the appointment, promotion and disciplinary control of all  
25 employees of the commission, and

26 (ii) appeal process to be followed by employees against disciplinary  
27 measures they may disagree with and such other matters to promote efficient  
28 performance of the functions of the Commission under this Bill.

29 **31.** The control of the Commission's staff, including their promotion  
30 and discipline, is vested in the Board but may be delegated by the Board to the

1 Director General or, in the absence of a Director General, any of the  
2 Executive Directors subject to such conditions as may be specified by the  
3 Board or directed by the President.

4 **32.** For the purpose of this Bill, service in the commission shall be  
5 public service, and as such, the staff of the Commission shall be public  
6 officers as defined in the Constitution and shall be entitled to such pension  
7 and retirement benefits as may be prescribed by the Commission.

8 **33.** There shall be established for the Commission, divisions,  
9 departments and units as the Board may determine from time to time for  
10 efficient and proper administration of the Commission.

11 **34.** There shall be an Executive Management Committee of the  
12 Commission comprising of the Director General and 4 Commissioners.

13 **PART VI: REMUNERATION OF BOARD MEMBERS AND**  
14 **STAFF OF THE COMMISSION**

15 **35.** The members of the Board shall be paid such remunerations  
16 and allowances as the President may approve on the advice of the Revenue  
17 Mobilisation Allocation and Fiscal Commission.

18 **36.** The Secretary and other staff of the Commission shall be paid  
19 such remuneration and allowances as the President may approve on the  
20 recommendation of the Board and advice of the Revenue Mobilisation  
21 Allocation and Fiscal Commission.

22 **PART VII: COVERAGE, REGISTRATION AND INELIGIBILITY, ETC**

23 **37.** Social security benefits, grants and incentives under this Bill Coverage  
24 shall apply exclusively to and be payable only to Nigerian citizens who are  
25 ordinarily resident in Nigeria and who are duly registered by the  
26 Commission as prescribed by this Bill as aged, permanently disabled,  
27 unemployed, or otherwise vulnerable or disadvantaged citizens due to  
28 improvident conditions and contingencies arising from circumstances or  
29 situations identified and listed in Clause 4(2) of this Bill, to wit-

30 (1) medical care of a preventive or curative nature, including any

1 morbid condition of whatever cause, pregnancy and confinement unrelated to  
2 crime, and their consequences;

3 (2) sickness, including incapacity to work resulting from a morbid  
4 condition and involving suspension of historical, ascertained and verifiable  
5 earnings;

6 (3) unemployment, including suspension of historical, ascertained  
7 and verifiable earnings due to inability to obtain suitable formal and informal  
8 employment by a capable, employable and fit and proper citizen who is  
9 available for work;

10 (4) old age, and this applies exclusively to any eligible person who is-

11 (a) at least 70 (seventy) years of age,

12 (b) not engaged in any gainful activity, or

13 (c) earning above a threshold prescribed by the Commission;

14 (5) broken or unsustainable family maintenance, which applies  
15 exclusively to a parent or guardian's inability to undertake his or her  
16 responsibility to maintain a child by failing to provide food, clothing, shelter,  
17 medical care and or funding for the educational training of the child until the  
18 child is 18 years of age;

19 (6) excessive maternity burdens, which applies exclusively to  
20 unfunded or poorly funded pregnancy and related confinement and their  
21 consequences, leading to suspension of lawful and ascertained historical  
22 earnings;

23 (7) invalidity, which applies exclusively to include inability to engage  
24 in any gainful activity due permanent or persistent inability after exhaustion of  
25 sickness benefit;

26 (8) the death of the breadwinner of a family, which applies  
27 exclusively to the loss of breadwinner support suffered by children who are  
28 below the age of 18 years and widows who are incapable of self-support due to  
29 the death of their breadwinner; and

30 (9) victims of social violence and internally displaced persons.

1                   **38.** The Board shall have power to make such regulations and  
2                   guidelines to expand or reduce the coverage of, access to and eligibility for  
3                   social security benefits under this Bill.

4                   **39.** Every citizen of Nigeria to which this Bill applies shall be     Registration  
5                   registered by the Commission as a social security beneficiary in such  
6                   manner as may be prescribed by regulations made by the Commission.

7                   **40.** A person is not eligible to apply to be registered as prescribed     Ineligibility  
8                   by Clause 39 of this Bill to receive or access social security benefits, grants  
9                   or incentives, if he is-

10                   (1) not a Nigerian citizen;

11                   (2) not ordinarily resident in Nigeria;

12                   (3) not covered under Clause 37 of this Bill;

13                   (4) a recipient of insurance protection or benefits for the  
14                   improvident conditions and contingencies identified and listed in Clauses  
15                   4(2) and 37 of this Bill under any existing law in Nigeria;

16                   (5) eligible for or entitled to any social security benefit in another  
17                   country;

18                   (6) a fugitive fleeing to avoid prosecution for an alleged offence, or  
19                   fleeing to avoid custody or confinement after conviction for any offence;

20                   (7) convicted and sentenced for economic and financial crimes in  
21                   Nigeria;

22                   (8) earning above any income threshold prescribed in any  
23                   regulation issued by the Commission;

24                   (9) employed in the public service of the Federation or a State or  
25                   the Federal Capital Territory or Local Government/Area Council and  
26                   entitled to the benefits of any scheme or pension on terms substantially  
27                   similar to those prescribed by the Pensions Act;

28                   (10) employed gainfully or beneficially engaged in agriculture or  
29                   any other area of the private or informal sector of the economy as shall be  
30                   determined by the Commission from time to time; and



1 (11) entitled to diplomatic or equivalent status under the Diplomatic  
2 Privileges and Immunities Act.

3 PART VIII: OFFENCES

4 **41.** A person who for the purpose of obtaining any benefit, grant,  
5 incentive or any other payment from the Fund or the Commission for himself  
6 or some other person-

7 (1) knowingly makes a false statement or representation; or

8 (2) knowingly produces or furnishes or causes to be produced or  
9 furnished any document which is false in any material particular; or

10 (3) misleads an officer, employee, agent or representative of the  
11 Commission in the discharge of his duties under this Bill,  
12 commits an offence and shall on conviction be liable to a fine of N20,000 or to  
13 imprisonment for one year and barred from receiving benefits under this Bill  
14 for life.

15 **42.** A person who knowingly acts or takes any step in violation of any  
16 provision of Clause 40 of this Bill is guilty of an offence and liable, on  
17 conviction, to imprisonment for a term of at least 1 (one) year and forfeit to the  
18 Commission any benefit gained as a result of the offence.

19 **43.** Where an offence under this Bill is committed by a body of  
20 persons-

21 (1) in the case of a body corporate, every director or officer of that  
22 body shall be deemed to be guilty of the offence; and

23 (2) in the case of a partnership or other association of individuals,  
24 every partner or officer of that body shall be deemed to be guilty of the offence  
25 and liable accordingly.

26 PART IX: FINANCIAL PROVISIONS

Establishment  
of the National  
Social Security  
Commission  
Fund

27 **44.** There is established the National Social Security Commission  
28 Fund ("NASSCOM-FUND") (in this Bill referred to as "the Fund"), which  
29 shall be operated and managed as provided in this Bill.

30 **45.** The Fund shall be managed in accordance with extant financial

1 regulations applicable in the public service of the Federation

**46.** All monies received into the Fund and any proceeds thereto that forms any reserve unspent after statutory expenses shall be invested according to guidelines approved by the Board.

5                   **47.** The Commission shall be exempted from payment of Income  
6           Tax under the Company Income Tax Act or any other levies, duties or  
7           contributions that may be imposed by law or regulation.

8               **48.** There shall be paid into the Fund for the operations of the      Payments into  
9      Commission-                                  the Fund

(1) take-off grants, annual subventions, budgetary allocations and such sums of money and payments received from the Government of the Federation by the Commission for the performance of Commission's functions under this Bill;

14 (2) 0.5% of the annual Budget of the Federation;

15 (3) 0.5% of the Value Added Tax (VAT) collected by the Federal  
16 Inland revenue Service (FIRS);

17 (4) 0.5% of royalties from all oil and gas related payments;

(5) 0.05% of all Ports and Maritime related charges as declared by the Federal Ministry of Finance;

20 (6) fines, fees and charges made by, and forfeitures received by the  
21 Commission;

(7) incomes, including interests and returns on investments,  
realized from investments made from the Funds by the Commission;

(8) aides, grants, gifts, donations and support received by the Commission from local and international organizations, agencies, charities, philanthropists, and other social partners;

(9) all sums of money or incomes accruing to the Commission by way of testamentary dispositions and endowments; and

(10) all contributions and other monies which may accrue to the Commission from time to time under this Bill.

17           **52.** Money standing to the credit of the Fund and not immediately  
18 required to be expended in meeting the obligations of the Commission,  
19 including payments to beneficiaries, may be invested from time to time in such  
20 proportions as the Board may approve, having regard to contingencies.

21                   **53.** The Director General of the Commission, in conjunction with  
22 Chairman, shall not later than September 30 of each year, submit to the  
23 National Assembly, an estimate of the projected expenditure of the  
24 Commission during the next succeeding year and shall include a copy of the  
25 Annual Audited Accounts and Actuarial Reports.

26 PART X: ANNUAL REPORTS

27                   **54.** The Board shall cause to be prepared and submitted to the  
28   President through the Chairman, not later than the 30th day of August in each  
29   year a report on the activities of the Commission during the immediately  
30   preceding year and shall include in the report the Annual Audited Accounts and

1 Actuarial Reports of the Commission and the Auditor-General's report  
2 thereon.

3 PART XI: DEREGISTRATION OF BENEFICIARY

4 **55.** Subject to regulations made in that behalf by the Commission,  
5 a beneficiary may be deregistered, and payment of social security benefits,  
6 grants and incentives to him discontinued, if the Commission decides that  
7 the improvident conditions and contingencies that occasioned his  
8 registration for social security support under this Bill no longer exist.

9 PART XII: LEGAL PROCEEDINGS

10 **56.** The provision of the Public Officers' Protection Act shall apply  
11 in relation to any suit instituted against any officer or employee of the  
12 Commission in his capacity as such.

13 **57.** A pre-action notice shall be served by any intending plaintiff or  
14 claimant on the Board or the Commission at least 30 days ahead of any  
15 lawsuit.

16 **58.** Notwithstanding anything contained in any other law or  
17 enactment, no suit shall lie against any member of the Board, the Managing  
18 Director or any other officer or employee of the Commission for any act  
19 done in pursuance or execution of this Act or any other law or enactment, or  
20 of any public duty or authority or in respect of any alleged neglect or default  
21 in the execution of this Bill or such law or enactment, duty or authority, shall  
22 lie or be instituted in any court unless-

23 (1) it is commenced within three months next after the act, neglect  
24 or default complained of; or

25 (2) in the case of a continuation of damage or injury, within six  
26 months next after the ceasing thereof.

27 **59.** Subject to section 174 of the Constitution of the Federal  
28 Republic of Nigeria 1999 (on the power of the Attorney-General of the  
29 Federation to institute, continue or discontinue criminal proceedings), any  
30 employee of Commission authorised in that behalf by the Board or Director

1 General and who is a legal practitioner may appear before any court of  
2 competent jurisdiction to conduct or defend any complaint or other  
3 proceedings arising under this Bill.

4 **60.** A notice, summons or other document required or authorised to be  
5 served upon the Commission or the Board under the provisions of this Act or  
6 any other law or enactment may be served by delivering it to the Director  
7 General or by sending it by registered post and addressed to the Director  
8 General at the principal office of the Commission.

9 **61.** In any action or suit against the Commission, no execution or  
10 attachment of process in the nature thereof shall be issued against the  
11 Commission.

12 **62.** Any sum of money which may by the judgment of any court be  
13 awarded against the Commission shall, subject to any direction given by court  
14 where notice of appeal of the said judgment has been given, be paid from the  
15 Fund.

16 **63.** No member, officer, servant or agent of the Commission shall  
17 incur personal liability for any act done in good faith while engaged in the  
18 business of the Commission.

19 **64.** Any member of the Board and officer or employee of the  
20 Commission shall be indemnified out of the assets of the Commission against  
21 any proceeding, whether civil or criminal, in which judgment is given in his  
22 favour or in which he is acquitted, if any such proceeding is brought against  
23 him in his capacity as a member of the Board, the Director General, officer or  
24 employee of the Commission.

25 **65.** No execution or attachment of processes shall be issued against  
26 the Commission without the consent of the Attorney-General of the  
27 Federation.

28 **66.** Any sum of money awarded against the Commission shall be paid  
29 from the general reserve fund of the Commission.

## 1 PART XIII: MISCELLANEOUS PROVISIONS

2 **67.** Subject to the provisions of this Bill, the President may give to  
3 the Commission lawful directives of a general nature or relating generally to  
4 matters of policy with regard to the performance by the Commission of its  
5 functions and it shall be the duty of the Commission to comply with the  
6 directives.

Compliance with  
Presidential  
Directives

7 **68.** The Federal Government may enter into a reciprocal agreement  
8 with the government of any other country in which a scheme similar to that  
9 established, by this Bill has been established, and may include in the  
10 agreement provisions modifying, adapting or amending the provisions of  
11 this Act to give effect to the agreement.

Reciprocal  
Agreements

## 12 Regulations

13 **69.** The Board may, with the approval of the President, make  
14 regulations, generally for the purpose of giving full effect to this Bill.

15 **70.** The Board may, after consultation with the President, make  
16 regulations giving effect to the provisions of this Bill, and without prejudice  
17 to the generality of the foregoing the regulations may provide for-

18 (1) the prescription of anything required to be prescribed under the  
19 Bill;

20 (2) the prescription of benefits, grants or incentives payable under  
21 this Bill;

22 (3) records to be kept by the Commission and its employees in  
23 respect of benefits payable from the Fund;

24 (4) the amount or quantum of benefits payable from the Fund under  
25 this Bill;

26 (5) the method(s) of paying, collecting or receiving benefits under  
27 this Bill;

28 (6) the prescription of the procedure for accessing benefits under  
29 this Bill; and

30 (7) the prescription of any forms or documents required for the

	1	purposes of the Act.
	2	<b>71.</b> Regulations made under Clauses 67 and 68 of this Bill shall not
	3	come into operation until they are published in the Federal Gazette.
Trustee Investments Act not to apply	4	<b>72.</b> The provisions of the Trustee Investment Act shall not apply to the
	5	investment of money by the Commission.
Interpretation	6	<b>73.</b> In this Bill, unless the context otherwise requires-
	7	"beneficiary" means a registered recipient of social security benefits, grants
	8	and incentives under this Bill;
	9	"benefit" means benefits payable under this Act;
	10	"Aged" means any citizen of Nigeria who is ordinarily resident in Nigeria and
	11	is at least 70 years of age;
	12	"Benefit" means any social security payment to a beneficiary under this Bill;
	13	"Board" means the governing Board established for the Commission under
	14	Clause 9 of this Bill;
	15	"Chairman" means the Chairman of the Board;
	16	"Commission" means the Nigerian Social Security Commission established by
	17	Clause 2 of this Bill;
	18	"Director General" means the person appointed as Director General under
	19	Clause 14(2) of this Bill;
	20	"Eligibility" means being qualified to benefit from the social security scheme
	21	under this Bill;
	22	"Member" means a member of the Board and includes the Chairman, Director
	23	General and Executive Directors.
Short title	24	<b>74.</b> This Bill may be cited as the Nigerian Social Security
	25	Commission (Establishment, etc.) Bill, 2022.

## EXPLANATORY MEMORANDUM

This Bill seeks to establish the Nigeria Social Security Commission to provide Social Security Protection to all eligible citizens of Nigeria who are ordinarily resident in Nigeria.

## 1 SCHEDULE

2 *Clause 18*

## 3 SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD, ETC.

4 *Proceedings of the Board*

5 1. Subject to this Bill and section 27 of the Interpretation Act, the  
6 Board may make standing orders regulating its proceedings or those of any  
7 of its committees.

8 2. The Board shall meet at least four times in a year and at such  
9 other times as the Chairman may, from time to time, determine and in any  
10 case, shall not meet more than six times in a year.

11 3. The quorum of the Board shall be the Chairman who shall  
12 preside at the meeting, the Director-General or one Executive Director and  
13 one third of the other members of the Board. The quorum of any Committee  
14 of the Commission shall be as determined by the Board.

15 4. The Board shall meet whenever it is summoned by the  
16 Chairman, and if the Chairman is required to do so by a notice given to him  
17 by not less than 4 other members, he shall summon a meeting of the Board to  
18 be held within 14 days from the date on which the notice is given.

19 5. At any meeting of the Board, the Chairman shall preside but if  
20 he is absent, the members present at the meeting shall appoint one of their  
21 members to preside at that meeting.

22 6. Where standing orders made under paragraph 1 of this Schedule  
23 provide for the Board to co-opt persons who are not members of the Board,  
24 such persons may advise the Board on any matter referred to them by the  
25 Board, but shall not be entitled to vote at a meeting of the Board or count  
26 towards a quorum.

27 7. Where standing orders made pursuant to paragraph 1 of this  
28 Schedule provide for a committee of the Board to consist of or to co-opt  
29 persons who are not members of the Board, the committee may advise the  
30 Board on any matter referred to it by the Board.



1           8. The Board may appoint one or more committees to carry out, on its  
2    behalf, such functions as the Board may determine.

3           9. A committee appointed under paragraph 7 of this Schedule shall  
4    consist of such number of persons as may be determined by the Board and a  
5    person shall hold office on the committee in accordance with the terms of his  
6    appointment.

7           10. Every committee appointed under paragraph 7 of this Schedule  
8    shall be presided over by a member of the Board and shall be made up of such  
9    number of persons, not necessarily members of the Board, as the Board may  
10   determine in each case.

11          11. The quorum of any committee set up by the Board shall be as may  
12   be determined by the Board.

13          12. A decision of a committee of the Board shall be of no effect unless  
14   confirmed by the Board.

15          13. The fixing of the seal of the Commission shall be authenticated by  
16   the signatures of the Chairman or any other member of the Board generally or  
17   specifically authorised by the Board to act for that purpose and the Director  
18   General.

19          14. A document purporting to be a document duly executed under the  
20   seal of the Commission shall be received in evidence and shall, unless and until  
21   the contrary is proved be presumed to be so executed.

22          15. The validity of any proceedings of the Board or of a committee  
23   shall not be adversely affected by-

24           (a) a vacancy in the membership of the Board or committee; or

25           (b) a defect in the appointment of a member of the Board or  
26   committee; or

27           (c) reason that a person not entitled to do so took part in the  
28   proceedings of the Board or committee.

NIGERIAN INDEPENDENT WAREHOUSE REGULATORY AGENCY AND  
OTHER RELATED MATTERS, 2022

ARRANGEMENT OF SECTIONS

PART I - ESTABLISHMENT OF THE NIGERIAN INDEPENDENT WAREHOUSE  
REGULATORY AGENCY AND ITS GOVERNING BOARD

1. Establishment of the Nigerian Independent Warehouse Regulatory Agency
2. Establishment of a governing board for the Agency
3. Tenure of Office
4. Cessation of membership
5. Emolument of members

PART II - POWERS AND FUNCTIONS OF THE BOARD OF THE AGENCY

6. Powers of the Board
7. Functions of the Agency

PART III - STAFF OF THE AGENCY

8. Appointment and responsibilities of the Director-General
9. Appointment and responsibilities of the Secretary
10. Other staff
11. Pension
12. Experts and consultants

PART IV - LICENSING PROCEDURE

13. Issuance of licences
14. Transitional provisions applicable to existing Warehouse Operators
15. Licensing procedure
16. Validity of license
17. Conditions for the issuance of a license
18. Furnishing of a bond by applicant
19. Right of action on a bond
20. Designation as a licensed and bonded Warehouse

21. Casualty insurance and recovery of loss
22. Schedule of charges
23. Revocation, suspension or refusal to grant a license
24. Power to appoint Inspectors
25. Publication of particulars of Warehouse Owners and Operators

PART V - WAREHOUSE RECEIPTS

26. Issuance of a Warehouse Receipt
27. Warehouse Receipt as evidence of proprietary rights
28. Form of Warehouse Receipt
29. Contents of a Warehouse Receipt
30. Negotiable Warehouse Receipts
31. Non-Negotiable Warehouse Receipts
32. Altered Warehouse Receipts
33. Rights of purchasers of altered receipts against Warehouse Operator
34. Lost or missing Warehouse Receipts
35. Duplicate Warehouse Receipts
36. Trading in Warehouse Receipts on commodity exchanges

PART VI - RIGHTS AND OBLIGATIONS OF A WAREHOUSE OPERATOR

37. Application of provisions on Pioneer Status
38. Obligation of a Warehouse Operator to deliver
39. Obligation to deliver in accordance to the demand of the holder
40. Justification for delivery of goods
41. Liability for wrongful delivery of goods
42. Exception to obligation to deliver
43. Liability for failure to cancel Warehouse Receipt after the delivery of goods
44. Liability for failure to cancel or mark Warehouse Receipt after Delivery in parts of goods.
45. Liability for loss or theft of a Warehouse Receipt
46. Delivery of goods to persons with valid titles or right

47. Liability for wrongful description of goods
48. Registration of Warehouse Receipts
49. Liability for loss or injury to goods
50. Separation or mixing of fungible goods
51. Warehouse Operator's right to lien
52. Enforcement of lien
53. Loss of right of lien
54. Statement of charges under lien
55. Failure to satisfy lien
56. Other remedies.
57. Methods of enforcement of lien
58. Perishable and hazardous goods

PART VII - NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

59. Requirements of negotiation of a Warehouse Receipt
60. Rights derived from negotiation
61. Loss of rights to goods
62. Rights acquired without due negotiation
63. Rights of a transferee of a Warehouse Receipt
64. Rights and obligations of a transferor and a transferee of a negotiable Warehouse Receipt
65. Warranties on negotiation of the Warehouse Receipt

PART VIII - ESTABLISHMENT OF THE CENTRAL REGISTRY

66. Establishment of the Central Registry for Warehouse Receipt
67. The Registrar, staff and other officers of the Registry
68. Registration of Warehouse Receipts
69. Registration and certification of Warehouse Receipts
70. Maintenance of a register and on-line operations
71. Power to make Regulations for the Central Registry

PART IX - RESOLUTION OF DISPUTES

72. Referral of disputes

- 73. Arbitral Panel
- 74. Interpleader Action

#### PART X - OFFENCES AND PENALTIES

- 75. Operating a Warehouse without a license
- 76. Issuance of false receipts where goods have not been received
- 77. False statement contained in a Warehouse Receipt
- 78. Issuance of unmarked duplicate receipts
- 79. Consequences for non-declaration by Warehouse Operator of interesting goods
- 80. Delivery of goods without obtaining negotiable receipt
- 81. Negotiation of receipt for mortgaged goods
- 82. Obstructing a Warehouse Inspector
- 83. Alteration of document
- 84. Aiding and abetting
- 85. General penalty

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- 86. Funds of the Agency
- 87. Sound financial principles
- 88. Bank accounts
- 89. Borrowing powers
- 90. Annual financial estimates
- 91. Accounts
- 92. Audit
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#### PART XII - MISCELLANEOUS PROVISIONS

- 97. Effect of revocation or termination of license
- 98. Insurance of goods

- 99. Inspection of Warehouses by the Agency
- 100. Classification of Warehouses
- 101. Fees
- 102. Protection of the members of the Board and staff of the Agency
- 103. Regulations
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- 105. Short title

SCHEDULE

Meetings of the Board

- 1. Convening Meetings
- 2. Quorum
- 3. Decision Making
- 4. Disclosure of Interest
- 5. Co-option of persons to meetings of the Board
- 6. Minutes of Meetings
- 7. Board to regulate its own procedure



# A BILL

## FOR

AN ACT TO ESTABLISH THE NIGERIAN INDEPENDENT WAREHOUSE  
REGULATORY AGENCY AND OTHER RELATED MATTERS, 2022

*Sponsored by Senator Umar, Sadiq Suleiman*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal  
Republic of Nigeria as follows:

1 PART I - ESTABLISHMENT OF THE NIGERIAN INDEPENDENT

2 WAREHOUSE REGULATORY AGENCY AND ITS GOVERNING BOARD

3 1.-(1) There is established a body to be known as the Nigerian Establishment  
4 Independent Warehouse Regulatory Agency (in this Act referred to as "the of the Nigerian  
5 Agency"). Independence  
Warehouse  
Regulatory Agency

6 (2) The Agency:

7 (a) is a body corporate with perpetual succession and a common  
8 seal; and

9 (b) may sue or be sued in its corporate name.

10 2.-(1) There is established for the Agency, a governing board (in Establishment  
11 this Act referred to as 'the Board') with overall responsibility for the control of a Governing  
12 of the management of the affairs of the Agency. Board for the  
Agency

13 (2) The Board shall consist of:

14 (a) a Chairman;

15 (b) the Director-General of the Agency;

16 (c) a representative of each of the following, not below the rank of a  
17 director:

18 (i) the Federal Ministry of Trade and Investment;

19 (ii) the Federal Ministry of Agriculture and Rural Development;

20 (iii) the Federal Ministry of Finance;

21 (iv) the Federal Ministry of Justice;



	1	(v) the Central Bank of Nigeria;
	2	(vi) the Securities and Exchange Commission;
	3	(d) a representative from the Nigeria Association of Small and
	4	Medium Enterprises;
	5	(e) a representative of the Chartered Institute of Bankers;
	6	(f) two representatives of association of farmers in Nigeria; and
	7	(g) a representative of the Association of Nigerian Enterprises.
	8	(3) The members of the Board referred to in subsection (2),
	9	paragraphs (a) and (b) of this section shall be appointed by the President on the
	10	recommendation of the Minister and shall be persons of proven integrity with
	11	cognate experience and qualifications of not less than ten years in the relevant
	12	fields.
Tenure of Office	13	3. The Chairman and other members of the Board, not being an ex-
	14	officio member, shall hold Office for a term of four years and may be re-
	15	appointed for another term of four years and no more.
Cessation of Membership	16	4.-(1) The provision of section 3 of this Act notwithstanding, a
	17	member of the Board shall cease to hold office as a member if:
	18	(a) he resigns his appointment as a member of the Board by notice
	19	under his hand addressed to the President through the Minister;
	20	(b) he becomes of unsound mind;
	21	(c) he becomes bankrupt or makes a compromise with his creditors;
	22	(d) he is convicted of a felony or of an offence involving dishonesty or
	23	corruption;
	24	(e) he becomes incapable of carrying on the functions of his office
	25	either arising from an infirmity of mind or body;
	26	(f) he has been found guilty of contravening the Code of Conduct for
	27	public officers or of gross misconduct in relation to his duties;
	28	(g) in the case of a person possessing a professional qualification, is
	29	disqualified by a competent authority;
	30	(h) in the case of a person who becomes a member by a virtue of the

1 office he occupies, he ceases to hold such office; and

2 (i) the President is satisfied that it is not in the interest of the Agency  
3 or the public for the person to continue in office.

4 (2) Where a vacancy occurs in the membership of the Board, it  
5 shall be filled by the appointment of a successor to hold office for the  
6 remainder of the term of office of his predecessor, so as to represent the same  
7 interest as his predecessor.

8 **5.** -Members of the Board shall be paid such remuneration and Emolument of  
9 allowances as the Federal Government may from time to time approve. members

10 **PART II - POWERS AND FUNCTIONS OF THE BOARD OF THE AGENCY**

11 **6.-(1)** The Board has powers to:

Powers of the  
Board

12 (a) formulate the general policy guidelines for the Agency;

13 (b) supervise the management of the property, funds and income of  
14 the Agency and other concerns and affairs of the Agency;

15 (c) issue operational guidelines for the administrative structure of  
16 the Agency;

17 (d) ensure the implementation of the Performance Management  
18 System in the Agency;

19 (e) employ and determine the terms and conditions of the  
20 employees of the Agency; and

21 (f) do such other things as are necessary in the carrying out of its  
22 responsibilities under this Act

23 **7.-(1)** The functions of the Agency are to:

Functions of the  
Agency

24 (a) license Warehouses in accordance with the provision of this  
25 Act;

26 (b) regulate the operations of a licensed Warehouse Keepers under  
27 this Act;

28 (c) classify licensed Warehouses into categories;

29 (d) certify in licensed Warehouses operators including Warehouse  
30 Inspectors, Samplers, Graders and Weightiers;

- 1 (e) provide requisite training for licensed certified Warehouse
- 2 Operators and persons employed in licensed Warehouses;
- 3 (f) promote awareness and use of Warehouse Receipts;
- 4 (g) hold regular consultations with Warehouse Operators in the
- 5 development of appropriate policy on Warehouse operations under this Act and
- 6 build consensus on policy issues and measures;
- 7 (h) promote and co-ordinate inflow of credit and grants to the sector
- 8 and establish linkages that will attract investment from other countries;
- 9 (i) publish periodically the names and addresses of licensed and
- 10 bonded Warehouses and provide classification of their licenses;
- 11 (j) publish the results of investigations made on any matter pertaining
- 12 to Warehouse operations;
- 13 (k) ensure that licensed Warehouses maintain internationally
- 14 acceptable minimum standards of storage and operations;
- 15 (l) promote the trade ability of Warehouse Receipts;
- 16 (m) create electronic linkages between the Warehouse Receipts
- 17 Registry and existing commodity exchanges;
- 18 (n) provide advice and support on regulation of weights and under the
- 19 Weights and Measures Act in collaboration responsible Ministry;
- 20 (o) establish quality standards to enable appropriate value to be
- 21 placed on each agricultural product or by-product for storage at a licensed
- 22 Warehouse;
- 23 (p) regularly advice Federal and State Governments on policies and
- 24 programs to promote the effective use of Warehouse Receipts framework,
- 25 including mechanisms to support establishment of agro product processing
- 26 centres in proximity to licensed Warehouses;
- 27 (q) in consultation with the Minister, develop and implement a
- 28 program to support the setting up of processing centres and increased capacity
- 29 for processing of stored agricultural products by licensed Warehouse
- 30 Operators; and

1 (r) carry out such other activities as are necessary for the effective  
2 discharge of all or any of the functions of the Agency under this Act.

3 (2) For the purpose of carrying out the functions listed in  
4 subsection (1) of this section, the Agency has powers to:

5 (a) enter into and investigate activities and operations in licensed  
6 Warehouses;

7 (b) examine directly or through licensed Agents the operations,  
8 books, and accounts of licensed Warehouses to ensure that their operations  
9 are in conformity with prescribed minimum standard, with respect to  
10 weighing and codification of commodities;

11 (c) suspend, revoke or terminate (as the case may be) the  
12 operations of the licensed Warehouse following an investigation into the  
13 operations of a Warehouse keeper after affording the licensed holder the  
14 opportunity of being heard; and

15 (d) take steps to ensure the attendance of witnesses and production  
16 of records and information in carrying out any investigation into a  
17 Warehouse operations.

18 PART III - STAFF OF THE AGENCY

19 **8.**-(1) The Director-General of the Agency shall be appointed by  
20 the President on the recommendation of the Minister.

Appointment  
and responsibilities  
of the Director-  
General

21 (2) The Director-General is the Chief Executive Officer of the  
22 Agency.

23 (3) The Director-General is responsible for the management of the  
24 funds, property and business of the Agency and for the day to day  
25 administration, organization and control of the staff of the Agency.

26 (4) The Director-General, at such intervals as the Board may  
27 determine, is responsible for keeping the Board informed of the business of  
28 the Agency.

29 **9.**-(1) The Secretary of the Agency shall be appointed by the Board  
30 on such terms and conditions as the Board may determine.

Appointment  
and responsibilities  
of the Secretary

	1	(2) The Secretary is responsible for:
	2	(a) issuing notices of meetings of the Board;
	3	(b) keeping records of proceedings of the Board;
	4	(c) keeping records of all the activities of the Agency; and
	5	(d) superintending over the management of the affairs of the Central
	6	Registry.
Other staff	7	<b>10.</b> -(1) The Board shall appoint from time to time such other staff as
	8	may be required for the purpose of the efficient performance of the functions of
	9	the Agency.
	10	(2) The conditions of service of the staff of the Agency with respect to
	11	remuneration, pension, or other benefits on retirement or termination of the
	12	officers shall be as provided for in the Public Service of the Federation.
	13	(3) The Board may, on inception, take staff on secondment from other
	14	departments of government that possess related skills and experience needed to
	15	achieve the objectives of the Agency.
	16	(4) The Board may delegate any of its powers of appointment under
	17	this section to the Director-General, subject to such terms and conditions as the
	18	Board may determine.
Pension	19	<b>11.</b> -(1) Service in the Agency shall be pensionable and subject to the
	20	Pension Reform Act.
	21	(2) Nothing in this section shall preclude the appointment of a person
	22	to any office on terms which preclude the grant of pension in respect of that
	23	office.
Experts and consultants	24	<b>12.</b> -(1) The Agency may engage the services of experts and
	25	consultants for purpose of carrying out any its function where special
	26	competence expertises are required.
	27	(2) Experts or consultants engaged by virtue of the provision of this
	28	section may be paid such fees and allowances and afforded such facilities as the
	29	Agency, with the approval of the Board, may determine.

## 1 PART IV - LICENSING PROCEDURE

2 13.-(1) A person shall not operate a commercial Warehouse Issuance of  
3 without a valid license issued by the Agency. licences

4 (2) The Agency may, upon application in the prescribed form, issue  
5 to a Warehouse keeper a license for the operation of a commercial  
6 Warehouse in accordance with the provisions this Act.

7 (3) In issuing a license under subsection (2) of this section, the  
8 Agency shall satisfy itself that:

9 (a) the Warehouse is suitable for the proper storage of the particular  
10 goods for which a license is required;

11 (b) the Warehouse keeper meets the conditions for eligibility to  
12 operate a licensed Warehouse of the kind applied for as may be prescribed in  
13 regulations issued pursuant to this Act; and

14 (c) the Warehouse keeper agrees, as a condition to the granting of  
15 the license, to comply with and abide by the provisions of regulations made  
16 pursuant to this Act.

17 14. -(1) The Agency may by regulations provide for a transitional Transitional  
18 period, not exceeding two years for all existing commercial Warehouse provisions  
19 Operators to fully comply with and bring their operations in line with the applicable to existing  
20 provisions of this Act. Warehouse Operators

21 (2) Where an existing Warehouse Operators referred to in  
22 subsection (1) of this section continues to receive and warehouse  
23 commodities or designated good, without a license after a period of six  
24 months from the date specified in regulations made by the Agency such  
25 commercial Warehouse Operator must conspicuously display a notice, in  
26 the form and manner prescribed in regulations that it is neither bonded nor  
27 licensed.

28 15.-(1) A person requiring a licence under this Act may apply to the Licensing  
29 Agency in the manner prescribed in regulations made pursuant to this Act. procedure

30 (2) The Agency shall, before granting a license:

1 (a) inspect or authorize the inspection of the Warehouse in respect of  
2 which a license is applied for, to determine the suitability of the Warehouse for  
3 the storage of the particular goods for which the license is required; and

4 (b) publish the application in two national newspapers requesting for  
5 objections in accordance with rules prescribed in regulations made pursuant to  
6 this Act.

7 (3) The Agency shall, upon being satisfied that a Warehouse is  
8 suitable for the storage of the goods in the license classification and fulfilment  
9 of all other conditions grant a Warehouse license to the applicant in the  
10 classification applied for upon payment of the prescribed fees.

11 (4) The applicant shall thereafter annually pay the prescribed fee to  
12 the Agency on or before each anniversary of the granting of the license.

13 (5) Every Warehouse Operator shall display the license issued by the  
14 Agency in a conspicuous place at the entrance of the Warehouse or at any other  
15 place on the premises during working hours as regulations may prescribe.

Validity of  
license

16 **16.** The validity of a license shall be twelve months or such other  
17 periods, not exceeding three years, as the Agency may from time to time  
18 determine and renewable on terms and conditions as may be specified in  
19 regulations.

Conditions for  
the issuance of  
a license

20 **17.-(1)** A license shall not be issued by the Agency unless the  
21 applicant has satisfied all of the conditions prescribed in this Act and  
22 regulations made pursuant to this Act in respect of the type and category of  
23 license applied for.

24 (2) Prior to issuing a license under this Part, the Agency shall ensure  
25 that:

26 (a) the applicant is in possession of a Warehouse, whether as a lessee  
27 or owner;

28 (b) in the case of a lease, regulations shall prescribe the minimum  
29 lease period;

30 (c) upon inspection, the Warehouse is suitable for warehousing of the

1 category of goods or products with all required appurtenances;

2 (d) the devices for safe storage of the goods or products in respect  
3 of the particular class of license applied for are available;

4 (e) the applicant's director or manager or its principal officers have  
5 requisite experience and track record for Warehouse operations and has not  
6 been convicted by a court of competent jurisdiction or indicted in any  
7 disciplinary proceedings on allegations of criminal action involving  
8 dishonesty or financial impropriety and professional misconduct in the last  
9 preceding seven years;

10 (f) the Warehouse and the goods or products to be kept therein are  
11 fully insured in respect of fire, theft and burglary or any other damage;

12 (g) the applicant is financially capable of conducting the business  
13 of warehousing; and

14 (h) the applicant or Warehouse Operator gives the requisite  
15 undertaking to abide by all conditions for grant of the license and to comply  
16 fully with regulations issued under this Act.

17 **18. -(1)** A Warehouse Operator applying for a license to operate a  
18 Warehouse shall, as a condition for the granting of the license, execute and  
19 submit to the Agency, for filing, a bond in the form and substance  
20 acceptable to the Agency to secure the faithful performance of the  
21 applicant's obligations as a Warehouse Operator.

Furnishing of a  
bond by applicant

22 (2) Where the Agency determines that a previously approved bond  
23 is, or for any cause is or has become insufficient, it may require an additional  
24 bond or bonds to be given by the Warehouse Operator concerned,  
25 conforming with the requirements of this section, and, unless the additional  
26 bond is given within the time fixed by a written demand for it by the Agency,  
27 the license of the Warehouse Operator may be suspended or revoked by the  
28 Agency.

29 **19.** A person injured by the breach of any obligation in respect of  
30 which a bond is given, under section 18 of this Act, is entitled to sue in

Right of action  
on a bond



	1	person on the bond in court, to recover the damages sustained by the breach.
Designation as a licensed and bonded Warehouse	2	<b>20.</b> -(1) Upon the filing and approval by the Agency of a bond in
	3	compliance with the requirements of this Act, for the operation of a licensed
	4	Warehouse, the Warehouse may be designated as licensed and bonded
	5	Warehouse and the Warehouse Operator shall display in a conspicuous place,
	6	the Agency's emblem.
	7	(2) Save as provided under this Act, a Warehouse shall not be
	8	designated as licensed or bonded and a name or description conveying the
	9	impression that it is so licensed or bonded shall not be used until a license has
	10	been issued and a bond, as provided for in section 18 of this Act, has been filed
	11	with approval of the Agency.
	12	(3) A person who contravenes the provision of subsection (2) of this
	13	section commits an offence and liable on conviction to a term of imprisonment
	14	of three years or a fine of three million Naira or to both fine and imprisonment.
Casualty insurance and recovery of loss	15	<b>21.</b> -(1) A Commercial Warehouse Operator shall be obliged to ensure
	16	its warehouse structure and facilities for its own benefit.
	17	(2) A depositor of commodities or goods in a commercial warehouse
	18	above a value stipulated by the Agency in the rules shall at the point of deposit
	19	in a licensed warehouse, do one of the following:
	20	(a) provide evidence of at least an all risk insurance coverage for the
	21	commodity or goods deposited;
	22	(b) request the Warehouse Operator to insure the commodities or
	23	goods deposited on its behalf and at its cost; or
	24	(c) give written undertaking to secure insurance of the goods
	25	deposited in its name and in its favour.
	26	(3) The requirement for depositor insurance shall not in any way
	27	reduce the warehouse operators duty of care over commodities or goods
	28	deposited in the warehouse.
Schedule of charges	29	<b>22.</b> -(1) An applicant for a license to operate a Warehouse under this
	30	Act, shall as a condition for the grant, file or cause to be filed with the Agency

1 the name or list of commodities of goods proposed to be warehoused and a  
2 copy of the proposed schedule of charges as a Warehouse Operator.

3 (2) A licensed Warehouse Operator shall not make a change in the  
4 charges unless a notice of the change and its reasons have been filed and  
5 approved by the Agency.

6 (3) Where the Agency receives a proposal for change of charges, it  
7 shall afford the Warehouse Operator an opportunity to give reasons for the  
8 requested changes within one month of the receipt of the request and grant or  
9 refuse approval not later than two months from the date of the request.

10 (4) A refusal for the request for fee variation by the Agency shall be  
11 in writing addressed to the applicant containing all reasons for the refusal.

12 (5) A person aggrieved by the decision of the Agency on any matter  
13 relating to change of charges under this section may appeal to the Board.

14 **23.**-(1) The Agency may revoke, suspend, or refuse to grant a  
15 license as considered appropriate after granting to the Warehouse Operator  
16 the opportunity of being heard on the matter for any violation of the  
17 provisions of this Act.

Revocation,  
suspension or  
refusal to grant  
a license

18 (2) A person aggrieved with the decision or action taken by the  
19 Agency in subsection (1) of this section may appeal to the Board.

20 (3) Where a license is revoked, suspended or has expired, the  
21 Warehouse Operator shall terminate, in the manner prescribed by the  
22 Agency, all arrangements covering the receiving, storing, shipping,  
23 conditioning, or handling of commodities in the Warehouse covered by the  
24 license.

25 (4) Without prejudice to the provision of subsection (3) of this  
26 section, the Warehouse Operator shall be permitted, under the direction or  
27 supervision of the Agency to deliver commodities previously received  
28 either to the holders of Warehouse Receipts or to other bonded Warehouses.

29 (5) During the period of suspension of a license, the Warehouse  
30 Operator may, under the direction or supervision of the Agency, operate the

1 Warehouse and may only receive commodities for storage, conditioning,  
2 shipping, or handling during the term of such suspension as may be prescribed  
3 in regulations made by the Agency.

4 (6) The Agency shall by regulations prescribe procedures for the  
5 renewal of licences prior to their expiration.

Power to appoint  
inspectors

6 **24.**-(1) The Agency may appoint or otherwise authorize persons or  
7 groups of persons as inspectors ("Warehouse Inspectors").

8 (2) The Agency shall prescribe in the regulations qualifications of  
9 persons to be appointed as a Warehouse Inspectors.

10 (3) A Warehouse Inspector appointed pursuant to the provisions of  
11 this Act has powers to inspect premises and goods kept in a Warehouse to  
12 ensure that a Warehouse Operator observes the provisions of this Act and its  
13 regulations and the terms and conditions contained in a license issued by the  
14 Agency under this Act.

15 (4) A Warehouse Inspector or any other person with written  
16 authorization may at any reasonable time during the day, enters into a  
17 Warehouse premises for the purpose of ensuring that the provisions of this Act  
18 and its regulations are adhered.

Publication of  
particulars of  
Warehouse Owners  
and Operators

19 **25.** The Agency shall ensure that:

20 (a) reliable data containing the identity of Warehouse owners,  
21 Warehouse Operators, licensed inspectors, reports of inspection of  
22 Warehouses as and a list of all revoked licences are made available, on request,  
23 by any person or furnished periodically to the public;

24 (b) its audited accounts and annual performance reports are made  
25 public;

26 (c) in carrying out its operations under this Act, it is guided by the  
27 principles of accountability and transparency; and

28 (d) it holds regular stakeholder consultations on its operations, policy  
29 and application of its rules and regulations.

1	PART V - WAREHOUSE RECEIPTS	
2	<b>26.</b> A Warehouse Receipt shall only be issued by a Warehouse	Issuance of a Warehouse Receipt
3	Operator duly authorized and licensed to do so under this Act.	
4	<b>27.</b> -(1) A Warehouse Receipt drawn and issued by a Warehouse	Warehouse Receipt as evidence of proprietary rights
5	Operator shall be prima facie proof of the holder having proprietary rights in	
6	the goods.	
7	(2) A person acquires proprietary rights in the goods, in relation to a	
8	Warehouse Receipt, if that person is entitled to the ownership of the goods:	
9	(a) in return for a binding commitment to extend credit or for	
10	extension of an immediately available credit, whether or not drawn;	
11	(b) as security for or in total or partial satisfaction of a pre-existing	
12	claim;	
13	(c) by accepting delivery under a pre-existing contract for	
14	purchase;	
15	(d) in return for any consideration sufficient to support a pre-	
16	existing contract.	
17	<b>28.</b> -(1) A Warehouse Receipt shall only be printed by the Agency	Form of Warehouse Receipt
18	or at its order and shall be in the form prescribed by the Agency in	
19	regulations made pursuant to this Act.	
20	(2) A Warehouse Receipt shall be supplied exclusively to licensed	
21	Warehouse Operators by the Agency.	
22	(3) A Warehouse Receipt shall bear such security features as may	
23	be prescribed in regulations made by the Agency.	
24	<b>29.</b> -(1) The Warehouse Receipt shall contain:	Contents of a Warehouse Receipt
25	(a) the name of the Warehouse Operator;	
26	(b) the location of the Warehouse where the goods are stored;	
27	(c) the date of issue of the receipt;	
28	(d) the consecutive number of the receipt;	
29	(e) a statement as to whether the goods received shall be delivered	
30	to the bearer or another person named or order;	

1 (f) the rate of storage charges;

2 (g) a description of goods and packages containing the goods,  
3 showing the quantity, numbers or weights of the goods inside their packages or  
4 any other fuller description as the Agency may, from time to time, prescribe in  
5 regulations;

6 (h) the grade or class of commodity received and the standard  
7 description according to the official classification of the commodity made  
8 pursuant to any subsisting law and rules in force, except where the receipt  
9 conspicuously embodies a bold imprint that it is not negotiable;

10 (i) statement of amount of advances made or liabilities incurred for  
11 which the Warehouse Operator claims a lien or any arising contingent  
12 liabilities, and if the precise amount of those advances made or for those  
13 liabilities incurred is, at the time of the issue of the receipt, unknown to the  
14 Warehouse Operator or to the agent of the Warehouse Operator, a statement of  
15 the fact that advances have been made or liabilities are incurred and disclosing  
16 the purpose or nature of such liabilities;

17 (j) if the goods are to be packed, processed, substituted or otherwise  
18 transformed whilst in the Warehouse, a statement to that effect and a  
19 description of the nature, size and quantity of what shall be the product of the  
20 packing, processing or transformation;

21 (k) the expiry date of the goods, if any or any other information of the  
22 nature of the goods which does not impair the Warehouse Operator's obligation  
23 to deliver on the duty of care of the Warehouse Operator;

24 (l) provision for endorsement of transfer by negotiation or charges on  
25 value of goods;

26 (m) signature of the Warehouse Operator; and

27 (n) any other information as the Agency may from time to time  
28 prescribed in regulations.

29 (2) A Warehouse Operator shall be liable to the person injured by  
30 information contained in a Warehouse Receipt, for damages caused by the

1 omission of any term required to be included in the Warehouse Receipt  
2 under this Act.

3 (3) A Warehouse Operator may insert in receipts any other terms  
4 and conditions which are not contrary to the provisions of this Act or its  
5 regulations or which are not ordinarily void.

6 **30.** -(1) A Warehouse Receipt marked on its face as negotiable and Negotiable  
Warehouse Receipts  
7 issued to the bearer or to the order of a named person shall be known as a  
8 "Negotiable Warehouse Receipt" and be transferable by endorsement and  
9 delivery.

10 (2) Words shall not be inserted into a Negotiable Warehouse  
11 Receipt capable of rendering such receipt non-negotiable.

12 (3) The Board may prescribe in the regulations the procedure and  
13 limits of negotiation of a Negotiable Warehouse Receipt.

14 **31.** A Warehouse Receipt marked on its face as "Non-Negotiable" Non-Negotiable  
Warehouse Receipts  
15 and issued to a named person shall be treated as a "Non-Negotiable  
16 Warehouse Receipt" and be transferable only by assignment and delivery.

17 **32.** An alteration to a Warehouse Receipt shall be regarded as: Altered Warehouse  
Receipts

18 (a) immaterial if the alteration does not affect the prior proprietary  
19 rights of the holder or convey a false information or misrepresentation;

20 (b) authorized when made with an implied or direct permission or  
21 connivance of the Warehouse Operator and which renders a Warehouse  
22 Operator and the perpetrator liable under the provisions of this Act; or

23 (c) unauthorized when made without fraudulent intent, and made  
24 without an implied or direct permission or connivance of the Warehouse  
25 Operator and which renders the Warehouse Operator liable according to the  
26 terms of the receipt.

27 **33.** -(1) A purchaser of a Warehouse Receipt for value without Rights of purchasers  
of altered receipts  
against Warehouse  
Operator  
28 notice of alteration shall acquire the same proprietary rights against the  
29 Warehouse Operator which the purchaser would have acquired if the receipt  
30 had not been altered at the time of purchase.

1 (2) A purchaser of a Warehouse Receipt shall be regarded to have had  
2 notice of alteration, if before the purchase of the Warehouse receipt, the  
3 purchaser or his agent took part or influenced the alteration of the Warehouse  
4 Receipt.

5 (3) A purchaser of an altered Warehouse Receipt who has been found  
6 or could reasonably be imputed with possession of notice of alteration commits  
7 an offence under this Act and liable to be proceeded against under this Act in  
8 the same way and manner as the Warehouse Operator.

Lost or missing  
Warehouse Receipts

9 **34.**-(1) Any loss, theft or destruction of the Warehouse Receipt shall  
10 be reported by the holder of the warehouse Receipt to the Warehouse Operator  
11 who shall immediately report the loss to the Agency through the Central  
12 Registry.

13 (2) If a negotiable Warehouse Receipt has been lost, stolen or  
14 destroyed, a duplicate may be issued by the Warehouse Operator provided that  
15 the request of the holder is accompanied by:

- 16 (a) a police report of the loss, theft or destruction of the receipt;  
17 (b) an affidavit of loss, theft or destruction duly sworn to in a court of  
18 law;  
19 (c) notice of loss, theft or destruction filed at the Central Registry in  
20 the format stipulated by regulations;  
21 (d) proper and reliable identification; and  
22 (e) payment of reasonable costs of the operator to be stipulated on the  
23 face of the receipt.

24 (3) The Board may, by order published in requirements for the  
25 issuance of duplicate Receipts.

26 (4) An appeal relating to the issuance or otherwise of a duplicate  
27 receipt shall be made to the Agency.

28 (5) A Warehouse Operator shall not deliver goods which are subject of  
29 a loss or missing Warehouse Receipt except with prior notification to the

1 Central Registry and issuance of a duplicate receipt in respect of the goods  
2 concerned.

3 (6) A person who fraudulently obtained using an original  
4 Warehouse Receipt which has been reported missing or a Warehouse  
5 Receipt in respect of which a duplicate receipt has been issued commits an  
6 offence and liable on conviction to five years imprisonment without an  
7 option of fine.

8 (7) A person who after endorsing and delivering a Warehouse  
9 Receipt to another fraudulently reports it missing and obtains a duplicate  
10 Receipt commits an offence and liable on conviction to five year without an  
11 option of fine.

12 **35.** -(1) A Warehouse Receipt upon the face of which the word  
13 'duplicate' is plainly placed shall be a representation and warranty by the  
14 Warehouse Operator that such Warehouse Receipt:

Duplicate Warehouse  
Receipts

15 (a) is an accurate copy of the original receipt; and

16 (b) has the same rights as the original receipt issued and  
17 outstanding at the date of issue of the duplicate.

18 (2) A duplicate receipt issued shall have the same standing as the  
19 original and shall not impose upon the Warehouse Operator any less or  
20 additional liability.

21 **36.** All Warehouse Receipts on commodities financed by banks  
22 shall be traded on a commodity exchange.

Trading in Warehouse  
Receipts on  
commodity exchanges

23 PART VI - RIGHTS AND OBLIGATIONS OF A WAREHOUSE OPERATOR

Application of  
provisions on  
Pioneer Status

24 **37.** A licensed Warehouse Operator may be considered for pioneer  
25 status in accordance with the provision of the Nigerian Investments  
26 Promotion Commission Act.

27 **38.** -(1) Except as provided under this Act or any regulations made  
28 from time to time by the Agency, a Warehouse Operator shall deliver stored  
29 goods upon demand made by the holder of the Warehouse Receipt or  
30 depositor, if the holder or depositor:

Obligation of a  
Warehouse Operator  
to deliver



1 (a) makes full payments for the Warehouse Operator's charges for  
2 storage and other services relating to the goods;

3 (b) signs relevant documents proving the delivery of the goods; and

4 (c) satisfies the Warehouse Operator of the identity of the individual  
5 taking possession of goods or where payment in lieu of lien has not been made,  
6 after deducting the exact quantity of the goods, value of which at open market  
7 value as at that date, is equal to accrued lien due to the Warehouse Operator,  
8 plus ancillary costs if any.

9 (2) A Warehouse Operator shall not issue negotiable Warehouse  
10 Receipts for goods in respect of which the Warehouse Operator, its directors or  
11 its staff has interest except it has obtained a licence in that regard permitting the  
12 Warehouse Operator to trade in goods which he warehouses.

13 (3) A Warehouse Operator shall not trade in goods which it is licensed  
14 to store, except as may be permitted by regulations made by the Agency.

15 (4) Where a Warehouse Operator by regulation is permitted to trade in  
16 its own goods, and in fulfilling any additional condition for grant of the licence,  
17 the Warehouse Operator must ensure that:

18 (a) there is a clear separation of the goods owned by it from other  
19 goods it is licensed to store;

20 (b) there are clear and transparent records available to show the  
21 demarcation of the goods;

22 (c) it issues receipt in respect of its goods indicating that the goods  
23 belong to it;

24 (d) it adheres to such other conditions as the Agency may from time to  
25 time impose by regulations.

Obligation to  
deliver in  
accordance to the  
demand of the  
holder

26 **39.** -(1) Subject to section 43 of this Act, a Warehouse Operator shall  
27 deliver the goods in accordance with the demand by a Warehouse Receipt  
28 holder or, as the case may be, the depositor.

29 (2) Where a Warehouse Operator refuses to deliver the goods as  
30 demanded by the holder or depositor of a Warehouse Receipt the burden shall

1 be upon the Warehouse Operator to establish the existence of any lawful  
2 excuse for the refusal.

3 (3) Where a Warehouse Operator refuses to deliver the goods as  
4 demanded by the depositor or holder of a Warehouse Receipt because of the  
5 reason that the Warehouse Receipt was altered, the holder or depositor who  
6 had notice of alteration shall be prevented from making further demands  
7 based on any proprietary rights in the Warehouse Receipt than those  
8 provided on the altered Warehouse Receipt.

9 40. Subject to the provisions of sections 42 and 43 of this Act, a Warehouse Operator shall deliver goods only after being satisfied that: Justification for  
delivery of goods

11 (a) the person receiving the goods is lawfully entitled to the  
12 possession of the goods; and

13 (b) by the terms indicated in the Warehouse Receipt issued for  
14 particular goods, that person is entitled to delivery, either by himself or on  
15 his written authorization, to another person.

16 41. -(1) A Warehouse Operator shall not deliver the goods if, prior Liability for  
wrongful delivery  
of goods  
17 to delivery, he receives information or otherwise becomes aware that a  
18 person to whom delivery is about to be made is not legally entitled to the  
19 delivery.

20 (2) A Warehouse Operator who:

21 (a) is informed that the person who claims delivery of the goods is  
22 not in fact lawfully entitled to the possession of the goods;

23 (b) ignores the information not to make delivery of the goods,  
24 under paragraph (a) of this subsection; and

25 (c) had information or knowledge that the delivery about to be  
26 made was to a person not lawfully entitled to the possession of the goods,  
27 and proceed to deliver the goods; shall be liable for conversion to all persons  
28 having proprietary rights in or in the possession of the goods in the exact  
29 market value of the goods wrongfully delivered and on conviction to a term  
30 of five years imprisonment.

Exception to  
obligation to  
deliver

1                   **42.** The Warehouse Operator shall not be liable for failure to deliver  
2                   the goods to the depositor, or owner of the goods, or to a holder of a Warehouse  
3                   Receipt given for the goods at the time of the deposit of the goods, even if such  
4                   receipt is negotiable, in a situation where goods have been lawfully sold or  
5                   disposed of-

6                   (a) because of their perishable or hazardous nature; or

7                   (b) to satisfy the Warehouse Operator's lien, provided that in each case  
8                   the Warehouse Operator shall have given prior notice of sale to the owner or  
9                   holder of the Warehouse Receipt and shall pay over to the owner sale proceeds  
10                  in excess of his due lien.

Liability for failure  
to cancel Warehouse  
Receipt after the  
delivery of goods

11                  **43.** -(1) Except as otherwise provided in this Act, where a Warehouse  
12                  Operator delivers goods for which he had issued a negotiable receipt, he shall  
13                  retrieve and cancel the receipt.

14                  (2) Where a Warehouse Operator fails to retrieve or cancel the  
15                  receipt as provided for under subsection (1) of this section, and a third party  
16                  purchaser without notice acquires title to the receipt, the Warehouse Operator  
17                  shall remain liable for the market value of the goods.

18                  (3) A Warehouse Operator who delivers goods for which he had  
19                  issued a negotiable receipt, but fraudulently failed to retrieve and cancel the  
20                  receipt, commits an offence and liable on conviction to imprisonment for a  
21                  term of two years and in addition shall pay the exact market value of the goods.

Liability for cancel  
to cancel or mark  
Warehouse Receipt  
after Delivery  
in parts of goods

22                  **44.**-(1) Except as otherwise provided in this Act, where a Warehouse  
23                  Operator delivers part of the goods for which he had issued a negotiable  
24                  Warehouse Receipt he shall-

25                  (a) retrieve and cancel that receipt and issue a new receipt for the  
26                  remaining goods; or

27                  (b) endorse conspicuously on the receipt the number or quantity of the  
28                  goods and packages delivered.

29                  (2) Upon cancellation or endorsement of a Warehouse Receipt as  
30                  provided in subsection(1) of this section, a Warehouse Operator shall

1 immediately register the cancellation or endorsement with the Central  
2 Registry.

3 (3) A Warehouse Operator who fails to comply with the provisions  
4 of subsection (1) of this section, commits an offence and is liable on  
5 conviction to imprisonment for a term of three years and in addition liable to  
6 pay the market value of the goods not delivered.

7 (4) Where a receipt is not retrieved or cancelled as provided under  
8 subsection (1) of this section and the purchaser acquires title to the receipt  
9 before or after the delivery of any portion of the goods, the Warehouse  
10 Operator shall remain liable.

11 **45.** A Warehouse Operator who fails to comply with the provisions  
12 of section 35 of this Act is liable for failure to deliver goods to a person who  
13 acquires in good faith, a lost, stolen or destroyed Warehouse Receipt without  
14 notice that a duplicate receipt has been issued or goods already delivered and  
15 liable on conviction to imprisonment for a term of not less than one year.

Liability for loss  
or theft of a  
Warehouse Receipt

16 **46.-(1)** A Warehouse Operator shall take all necessary precautions  
17 to ensure that the delivery of goods is made to a person who has lawfully  
18 obtained a Warehouse Receipt.

Delivery of goods  
to persons with  
valid titles or right

19 (2) A Warehouse Operator's title or right to the possession of goods  
20 shall only be derived:

21 (a) directly or indirectly from a transfer made by a depositor at the  
22 time of or subsequent to deposit of goods; or

23 (b) by a Warehouse Operator lien on the goods.

24 (3) Unless the title or right to possession of the goods by a  
25 Warehouse Operator is obtained in accordance with provisions of  
26 subsection (2) of this section no title or right to possession of goods shall  
27 exonerate the Warehouse Operator from liability for refusing to deliver the  
28 goods according to the terms indicated on the Warehouse Receipt.

29 **47.** Subject to the provision of subsection (2) of section 46 of this  
30 Act, a Warehouse Operator shall be liable to the holder of a Warehouse

Liability for  
wrongful description  
of goods

	1	Receipt for the goods named in the Receipt not been in existence or by failure
	2	of the goods delivered not corresponding with the description in the Warehouse
	3	Receipt subject only to changes that may occur in the goods, over time when
	4	stored in accordance with the conditions specified in this Act or by regulations
	5	made pursuant to this Act.
Registration of Warehouse Receipts	6	<b>48.</b> A Warehouse Operator shall register in favour of a depositor of
	7	goods in the Central Registry every Warehouse Receipt issued by the
	8	Warehouse Operator at a fee to be approved by the Agency.
Liability for loss or injury to goods	9	<b>49.-(1)</b> Except for unavoidable damages or deterioration associated
	10	with the nature and type of the goods and mode of storage provided under this
	11	Act and regulations made pursuant to this Act, a Warehouse Operator is liable
	12	for damages for loss of, or injury to the goods caused by the Warehouse
	13	Operator's failure to exercise due and reasonable care as circumstances may
	14	demand.
	15	(2) The provision of subsection (1) of this section notwithstanding,
	16	the owner of the goods is required to disclose to the Warehouse Operator any
	17	peculiarity associated with the goods to be stored.
Separation or mixing of fungible goods	18	<b>50.-(1)</b> Unless as may otherwise be prescribed in regulations issued
	19	by the Agency, a Warehouse Operator shall keep separate the goods covered by
	20	each receipt for ease of identification and delivery of the goods.
	21	(2) Where packing, processing, substitution or other transformation
	22	of goods are authorized by the depositor, the transformed products of those
	23	goods shall also be kept separate as required at all times.
	24	(3) Fungible goods mixed together under subsection (2) of this
	25	section, are owned in common by the persons entitled to them and the
	26	Warehouse Operator is severally liable to each owner for that owner's share.
	27	(4) Where as a result of over-issue of receipt, a mass of fungible goods
	28	is insufficient to meet all the receipts that the Warehouse Operator has issued
	29	against the goods, the persons entitled include all holders to whom over issued
	30	receipts have been issued, duly negotiated or otherwise transferred and

1 delivered by the Warehouse Operator who shall cause an endorsement to be  
2 made on such receipt in the ratio of the quantity and quality of goods  
3 represented in each of the receipt.

4 (5) A Warehouse Operator may only commingle commodities  
5 stored in its Warehouse subject to rules and regulations made from time to  
6 time by the Agency regulating commingling of particular goods or classes of  
7 goods.

8 **51.**-(1) Subject to regulations made from time to time by the Warehouse  
9 Agency, a Warehouse Operator's lien on goods deposited or the proceed of Operator's right  
10 such goods shall derive from all: to lien

11 (a) lawful charges for storage and preservation of goods;

12 (b) lawful claims for money advanced, interest, insurance,  
13 transportation, labour, weighing, and other charges and expenses in relation  
14 to such goods;

15 (c) reasonable charges and expenses incurred for notice and  
16 advertisements of sale; and

17 (d) sale of the goods where there is default in satisfying the  
18 Warehouse Operator's lien.

19 (2) The term "Warehouse Operator's Lien" used in subsection (1)  
20 of this section is the right of a Warehouse Operator to recoup fees and  
21 charges for services rendered or supplied or repayment of sums advanced in  
22 accordance with the provisions of subsection (1) of this section and the term  
23 "right of lien" shall be construed accordingly.

24 **52.** A Warehouse Operator's Lien may be enforced subject to the Enforcement of  
25 provisions of section 51 of this Act: lien

26 (a) against all goods, whenever deposited, belonging to the person  
27 who is liable as debtor for the claims in regard to which the lien is asserted;  
28 and

29 (b) against the established interest of the depositor in any other  
30 goods deposited with the Warehouse Operator, whether or not deposited by

	1	the debtor himself, provided that such exercise of lien shall only be to the extent
	2	and value of the established debtors interest in these other goods.
Loss of right of lien	3	<b>53.</b> A Warehouse Operator shall lose the right to the lien upon the
	4	goods by:
	5	(a) surrendering possession of the goods; or
	6	(b) refusing to deliver the goods upon demand made in accordance
	7	with the provisions of this Act.
Statement of charges under lien	8	<b>54.</b> Where a negotiable receipt is issued for goods, the Warehouse
	9	Operator shall have no lien on goods except for charges for storage, processing
	10	or such other endorsements on the face of the receipt as may be prescribed by
	11	regulations made under this Act provided that no lien shall be exercised against
	12	a third party purchaser for value over any sums or liabilities not expressed on
	13	the face of a negotiable receipt.
Failure to satisfy lien	14	<b>55.</b> A Warehouse Operator who has a valid lien against the person
	15	demanding the goods may refuse to deliver the goods until the lien is satisfied.
Other remedies	16	<b>56.</b> Other remedies available under the law that a creditor may have
	17	against a debtor for the collection from a depositor of all charges and advances
	18	which the depositor has expressly or impliedly contracted with a creditor, shall
	19	also be available to a Warehouse Operator notwithstanding the Warehouse
	20	Operator's Lien on the goods.
Methods of enforcement of lien	21	<b>57.</b> A Warehouse Operator's lien may be satisfied by:
	22	(a) the sale of a portion of the deposited goods in satisfaction of the
	23	lien and any costs associated with the sale at the prevailing market price;
	24	(b) other remedies allowed by law for the enforcement of a lien
	25	against personal property; or
	26	(c) any other action for recovery of the Warehouse Operator's claim.
Perishable and hazardous goods	27	<b>58.</b> -(1) Where the goods are:
	28	(i) perishable in nature;
	29	(ii) likely to deteriorate in value;
	30	(iii) in a state of foul odour;

1 (iv) corrosive and leaking;  
2 (v) highly inflammable or explosive; and  
3 (vi) likely to cause injury to life and other property, the Warehouse  
4 Operator shall give notice to the owner or to the person in whose name the  
5 goods are stored as is reasonable and possible under the circumstances, and  
6 where the person fails to comply with the notice to remove the goods from  
7 the Warehouse, within the time so specified, the Warehouse Operator may  
8 sell the goods with or without advertising and satisfy any lien he may have  
9 on the goods.

10 (2) If after reasonable efforts have been made, the Warehouse  
11 Operator is unable to sell the goods, the Warehouse Operator may dispose of  
12 the goods in any lawful manner, and shall incur no liability by reason of such  
13 disposal.

14 PART VII - NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

15 **59.**-(1) A negotiable Warehouse Receipt is negotiated by its  
16 endorsement by the transferor and delivery to the transferee and registration  
17 of the interest transferred at the Central Registry, provided that the non-  
18 registration of the transferred interest shall not at any time give any  
19 advantage to the transferor of the interest except otherwise expressly  
20 provided by regulations.

Requirements  
of negotiation of  
a Warehouse  
Receipt

21 (2) Registration of a notice of transfer of interest shall be a notice to  
22 the whole world of the transfer.

23 (3) A negotiable Warehouse Receipt is duly negotiated when  
24 negotiated as provided in subsection (1) of this section to another person in  
25 good faith and for value.

26 **60.**-(1) A Warehouse Receipt holder acquires after negotiation as  
27 provided under this Act:

Rights derived  
from negotiation

28 (a) title to the Warehouse Receipt;

29 (b) title to the goods, including, to the extent that such activities are  
30 authorized by the depositor and noted on the Warehouse Receipt, the



1 packed, processed, substituted or otherwise transformed goods of the  
2 depositor;

3 (c) all rights accruing under the law of agency or estoppel, including  
4 rights to goods delivered to the Warehouse Operator after the Warehouse  
5 Receipt was issued;

6 (d) the obligation of the Warehouse Operator to hold or deliver the  
7 goods according to the terms of the Warehouse Receipt and any related storage  
8 agreement fee; and

9 (e) liability to pay outstanding storage charges, advances and other  
10 fees endorsed on the Warehouse Receipt.

11 (2) Title and rights acquired under subsection (1) of this section are  
12 not defeated by the surrender of the goods by the Warehouse Operator.

13 (3) Except where a Warehouse Receipt was originally issued upon  
14 delivery of the goods by a person who had no power to dispose of the goods, a  
15 lien shall not attach by virtue of any judicial process to goods in the possession  
16 of a Warehouse Operator for which negotiable Warehouse Receipt is  
17 outstanding, unless the receipt is first surrendered to the Warehouse Operator  
18 or its negotiation is enjoined by court order, and the Warehouse Operator shall  
19 not be compelled to deliver the goods in accordance with any judicial process  
20 until the receipt is surrendered to the Warehouse Operator or made a subject of  
21 litigation before a court of competent jurisdiction or arbitral tribunal.

22 (4) A person who purchases a Warehouse Receipt for value without  
23 notice of the judicial or arbitral process takes the goods free of the lien imposed  
24 by the judicial arbitral process without removing the liability of the transfer or  
25 to any claim against him in that respect.

Loss of rights  
to goods

26 **61.**-(1) A Warehouse Receipt once issued creates a charge on the  
27 goods deposited at the Warehouse.

28 (2) A Warehouse Receipt does not confer any right in goods against a  
29 person who before the issue of the receipt had a legal interest or perfected  
30 security interest in such goods and who neither delivered nor entrusted the

1 goods or any bill of lading, Warehouse Receipt delivery order or other  
 2 document of title covering the goods to the depositor with actual or apparent  
 3 authority to ship, store, pack, process, transform or sell the goods; nor  
 4 acquiesced in the procurement by the depositor or his or her nominee of any  
 5 Warehouse Receipt or other document of title covering the goods.

6 (3) A buyer in the ordinary course of business of fungible goods  
 7 sold and delivered by a Warehouse Operator who is also in the business of  
 8 buying and selling such goods, takes free of any claim under a Warehouse  
 9 Receipt even though it has been duly negotiated.

10 **62.**-(1) A transferee of a negotiable Warehouse Receipt who has Rights acquired  
 11 taken the Warehouse Receipt by purchase, delivery and or registration without due  
 12 acquires the title and rights which the transferor had or had actual authority negotiation  
 13 to convey.

14 (2) In the case of a non-negotiable Warehouse Receipt, it shall not  
 15 be registrable or tradable on a commodity exchange and is only transferable  
 16 with prior notice in writing to the Warehouse Operator that issued it, the  
 17 endorsement of both the transferee and the Warehouse Operator on the face  
 18 of it and delivery to the transferee.

19 (3) A Warehouse Operator shall not issue a negotiable Warehouse  
 20 Receipt in respect of goods already covered by a non-negotiable receipt  
 21 except the non-negotiable receipt has been retrieved and cancelled.

22 **63.**-(1) A transferee of a duly negotiated Warehouse Receipt, shall Rights of a  
 23 acquire against the transferor, the title to the goods. transferee of a  
 Warehouse Receipt

24 (2) The title acquired by the transferee shall be subject to the terms  
 25 of the agreement with the transferor.

26 (3) The court may order a Warehouse Receipt to be transferred  
 27 where it is proved that there was an agreement to that effect between the  
 28 transferor and the transferee.

29 **64.**-(1) The transferee of a negotiable Warehouse Receipt for value Rights and  
 30 and in good faith shall have the right to compel the transferor of such receipt obligations of a  
 transferor and a  
 transferee of a  
 negotiable Warehouse  
 Receipt

1 to endorse the receipt in a case where the endorsement is essential for  
2 registration of the transferred interest.

3 (2) All negotiable Warehouse Receipts transferred shall be endorsed  
4 and the endorsed interest registered at the Central Registry.

5 (3) The endorsement, delivery or registration of a Warehouse Receipt  
6 in good faith shall not make the transferee liable for any default or fraudulent  
7 acts on the receipt occasioned by the Warehouse Operator or previous  
8 endorsers.

Warranties on  
negotiation of the  
Warehouse Receipt

9 **65.**-(1) The negotiation of transfer by delivery, endorsement and  
10 registration of new interest in the Warehouse Receipt for value, shall be an  
11 adequate proof or warranty for a third party purchaser for value without notice  
12 that the person who negotiates, transfers, delivers and in the case of non-  
13 negotiable warehouse receipts assigns that Warehouse Receipt does so  
14 because:

15 (a) the receipt is genuine; and

16 (b) has a legal right to negotiate, transfer or deliver the Warehouse  
17 Receipt.

18 (2) The transfer of goods in a contract between the parties relating to a  
19 Warehouse Receipt implies that the goods involved are merchantable and fit  
20 for that particular purpose.

21 (3) Warranty shall not be implied in respect of other liabilities  
22 endorsed on the Warehouse Receipt.

#### 23 PART VIII - ESTABLISHMENT OF THE CENTRAL REGISTRY

Establishment  
of the Central  
Registry for  
Warehouse Receipt

24 **66.** There is established a Central Registry for Warehouse Receipts  
25 (in this Act referred to as "the Central Registry") which shall be operated by the  
26 Agency and located in the Federal Capital Territory, Abuja.

The Registrar,  
staff and other  
officers of the  
Registry

27 **67.**-(1) The Secretary to the Agency shall be the Registrar of the  
28 Central Registry and responsible for registering Warehouse Receipts or any  
29 transaction relating to a Warehouse Receipt issued under this Act.

30 (2) The Agency may, with the approval of the Board, appoint a deputy

1 Registrar and other officers to assist the Registrar in the discharge of its  
2 duties under this Act, provided that both the Registrar and the deputy  
3 Registrar shall be legal practitioners of not less than ten years post call  
4 experience.

5 **68.**-(1) The Registrar shall receive and register Warehouse Receipts issued under this Act and register any cancellation, modification, Registration of  
6 or endorsement to the Warehouse Receipts and do all such other things as the Warehouse Receipt  
7 Board or the Agency may from time to time direct.

8  
9 (2) A Warehouse Operator issuing a negotiable Warehouse Receipt  
10 shall at the cost or fee prescribed by the Agency cause the Warehouse  
11 Receipt to be registered at the Central Registry.

12 (3) An original duplicate copy of a Warehouse Receipt delivered by  
13 a Warehouse Operator to the Registrar for registration or otherwise may be  
14 registered in the manner prescribed by regulations.

15 **69.**-(1) A Warehouse Receipt issued in accordance with the provisions of this Act shall be delivered to the Registrar for registration Registration and  
16 within fourteen days of issuance and transfer of interest shall be registered Certification of  
17 subject to regulations by the Agency within three working days of delivery Warehouse Receipts  
18 and endorsement.

19  
20 (2) A Certificate of Registration signed by the Registrar shall be  
21 conclusive evidence of registration of interest in a Warehouse Receipt.

22 **70.** -(1) The Registrar shall maintain a Register containing in a consecutive or chronological order all transactions carried on at the Central Maintenance of  
23 Registry. a register and on-  
24 line operations

25 (2) Provision shall be made at the Central Registry for on-line  
26 operations.

27 (3) The Agency may by regulations prescribe the modalities for  
28 on-line transactions at the Central Registry.

29 **71.** The Agency shall make such regulations and rules as are necessary for the day to day operations of the Central Registry. Power to make  
30 Regulations for  
the Central Registry

	1	PART IX - RESOLUTION OF DISPUTES
Referral of disputes	2	<b>72.</b> -(1) Where a dispute exists relating to a Warehouse Receipt
	3	transaction exists between the depositor and Warehouse Operator, such dispute
	4	shall, first be referred to the Agency for settlement.
	5	(2) In the settlement of a dispute the Agency may, afford the parties to
	6	such dispute, an informal hearing, to determine if a real dispute exists.
	7	(3) Where the Agency is not able to resolve a dispute it shall refer the
	8	dispute to the Arbitral Panel (referred to in section 73 of this Act) within
	9	twenty-one days of receipt of the notice of dispute.
Arbitral Panel	10	<b>73.</b> -(1) For the purpose of resolving disputes under this Part, an
	11	Arbitral Panel shall be set up by the Agency in accordance with the provisions
	12	of the Arbitration and Conciliation Act Cap 18 Laws of the Federation of
	13	Nigeria, 2004.
	14	(2) The Arbitral Panel shall determine any dispute referred to it by any
	15	of the party to the dispute or the Agency.
	16	(3) The Arbitral Panel shall conclude hearing on a matter referred to it
	17	and deliver a decision within thirty working days from the date of referral.
Interpleader Action	18	<b>74.</b> If more than one person claims title to goods covered or purported
	19	to be covered by a Warehouse Receipt, the Warehouse Operator is permitted to
	20	delay the delivery until the Warehouse Operator has ascertained the validity,
	21	within a reasonable time, of the adverse claims or to bring an action to compel
	22	all claimants to interplead including compelling the interpleader, either in
	23	defending an action for non delivery of the goods, or by original action,
	24	whichever is appropriate.
	25	PART X - OFFENCES AND PENALTIES
Operating a Warehouse without a license	26	<b>75.</b> -(1) A person, who, after the commencement of this Act and the
	27	expiration of the designated period under subsection 910 of section 14 of this
	28	Act, operates a commercial Warehouse without obtaining a license as required
	29	under this Act, commits an offence and liable on conviction to a term of
	30	imprisonment not exceeding five years, or to a fine not below three million

1 Naira or to both fine and imprisonment.

2 (2) A person who continues to operate a commercial Warehouse  
3 after the suspension or revocation of its operating license in accordance with  
4 the provisions of this Act commits an offence and liable on conviction to a  
5 term of imprisonment not exceeding five years or to a fine not exceeding two  
6 million Naira or to both fine and imprisonment.

7 **76.** A Warehouse Operator, its employee, agent, or servant who  
8 issues or aids in the issuance of a receipt knowing that the goods for which  
9 such receipt is issued have not been received by the Warehouse Operator, or  
10 are not under his direct control at the time of issuing such receipt, commits  
11 an offence and liable on conviction to a term of imprisonment not exceeding  
12 five years or to a fine not exceeding five million Naira or to both fine and  
13 imprisonment.

Issuance of false  
receipts where  
goods have not  
been received

14 **77.** A Warehouse Operator, its employee, agent or servant who  
15 fraudulently issues or aids in the fraudulent issuance of a receipt for goods  
16 knowing that the receipt contains a false statement, commits an offence and  
17 liable on conviction to imprisonment for a term not exceeding three years or  
18 to a fine of not less than one million Naira or to both fine and imprisonment.

False statement  
contained in a  
Warehouse Receipt

19 **78.-(1)** A Warehouse Operator, its employee, agent, or servant,  
20 who issues or aids in the issuance of a duplicate or additional negotiable  
21 receipt for the same goods or any part thereof which is outstanding and  
22 uncanceled, without plainly placing on the face of the Warehouse Receipt  
23 the word "Duplicate" commits an offence and liable on conviction to  
24 imprisonment for a term not exceeding five years or to a fine of not less than  
25 one million Naira or to both fine and imprisonment.

Issuance of  
unmarked duplicate  
receipts

26 (2) The provision of this section shall not apply where a duplicate  
27 of a Warehouse Receipt is issued in accordance with the provisions of this  
28 Act.

29 **79.-(1)** Where there are deposited with or held by a Warehouse  
30 Operator goods of which he or his agent or servants are employees, owners

Consequence for  
non-declaration  
by Warehouse  
Operator of  
interesting goods

1 without appropriate licensing, either solely or jointly or in common with others  
 2 then such Warehouse Operator, his employees, agents or servants who, aware  
 3 of this ownership and issues or aids in issuing a negotiable receipt for such  
 4 goods without the license to do so, commits an offence and on conviction be  
 5 liable to a term not exceeding three years or to a fine not below five million  
 6 Naira or to both fine and imprisonment.

7 (2) A Warehouse Operator licensed to trade in goods which he stores,  
 8 who fails to comply with the terms and conditions of such license shall be liable  
 9 to a fine of the sum imposed by the Agency and revocation for its license to  
 10 operate a commercial warehouse or such other conditions as the Agency may  
 11 impose.

Delivery of goods  
without obtaining  
negotiable receipt

12 **80.** A Warehouse Operator, or any of its employee, agent or servant  
 13 who delivers goods out of the possession of such Warehouse Operator,  
 14 knowing that a negotiable receipt the negotiation of which would transfer the  
 15 right to the possession of such receipt is outstanding and uncanceled, without  
 16 obtaining possession of that Warehouse Receipt at or before the time of such  
 17 delivery, and cancelling same, shall be liable to imprisonment for a term not  
 18 exceeding two years, or to a fine of not less than five hundred thousand Naira or  
 19 to both fine and imprisonment.

Negotiation of  
receipt for  
mortgaged goods

20 **81.** A person who:

21 (a) deposits goods to which he has no title, or upon which there is a  
 22 lien or mortgage;

23 (b) takes for such goods a negotiable receipt which he afterwards  
 24 negotiates for value with intent to deceive and without disclosing his want of  
 25 title or the existence of lien or mortgage; commits an offence and liable on  
 26 conviction to imprisonment for a term not exceeding seven years or to a fine not  
 27 exceeding five million Naira or to both fine and imprisonment.

Obstructing a  
Warehouse Inspector

28 **82.** A person who obstructs a Warehouse Inspector or any other  
 29 authorized person in the exercise of the power conferred upon him by this Act  
 30 or who neglects or refuses to produce to a Warehouse Inspector or any other

1 authorized person, any goods, documents, book of accounts or other such  
 2 records, commits an offence and liable on conviction to imprisonment for  
 3 three months or to a fine not exceeding five hundred thousand Naira.

4 **83.** A person who falsifies, tampers with or in any way alters a  
 5 registered document, interest or records of the Central Registry commits an  
 6 offence and liable on conviction to imprisonment for a term not exceeding  
 7 seven years or to a fine of not less than five million Naira or to both fine and  
 8 imprisonment.

Alteration of  
document

9 **84.** A person who aids or abets the commission of an offence under  
 10 this Act commits an offence and liable on conviction to imprisonment for a  
 11 term of three years or a fine in the same amount as prescribed for the offence  
 12 or to both fine and imprisonment.

Aiding and abetting

13 **85.** A person who contravenes any of the provisions of this Act, to  
 14 which no specific penalty is provided shall be liable on conviction for every  
 15 such offence to imprisonment for a term not exceeding two years or to a fine  
 16 not below one million Naira or to both fine and imprisonment.

General penalty

#### 17 PART XI - FINANCIAL PROVISIONS

18 **86.-(1)** The funds of the Agency shall consist of:

Funds of the  
Agency

19 (a) such sums of money as may be appropriated by the National  
 20 Assembly;

21 (b) moneys received by the Agency from inspecting and  
 22 supervising Warehouses;

23 (c) moneys borrowed by the Agency;

24 (d) moneys derived from the sale of Warehouse Receipt books; and

25 (e) any other monies received by or donated or made available to  
 26 the Agency for the purpose of performing its functions under this Act.

27 (2) The Agency shall not accept gifts or donations of monies where  
 28 such gifts and donations are inconsistent with the aims and objectives of this  
 29 Act.

30 **87.** The Agency shall perform its functions in accordance with

Sound financial  
principles



	1	sound and internationally accepted financial principles.
Bank accounts	2	<b>88.</b> The Agency shall open and maintain such bank accounts as are
	3	necessary for the performance of its functions in accordance with extant rules
	4	and regulations of the Federal Government.
Borrowing powers	5	<b>89.</b> The Agency may, with the approval of the Board, borrow such
	6	sums of moneys as may be required for the efficient discharge of its functions
	7	under this Act.
Annual financial estimates	8	<b>90.</b> -(1) The Director-General shall, not later than four months before
	9	the end of each financial year, prepare and submit to the Board for approval,
	10	estimates of income and expenditure of the Agency for the next following
	11	financial year and may, at any time before the end of each financial year,
	12	prepare and submit to the Board for approval any estimate supplementary to
	13	the estimates of the current year.
	14	(2) No expenditure shall be made out of the funds of the Agency
	15	unless that expenditure is part of the expenditure approved by the Board under
	16	the estimates for the financial year in which that expenditure is to be made or in
	17	estimates supplementary to that year's estimates.
	18	(3) Such estimates as approved under subsection 1 of this section shall
	19	be presented to the National Assembly for annual budgetary appropriation.
Accounts	20	<b>91.</b> -(1) The Board shall ensure that the Agency keeps proper accounts
	21	and records of its transactions and affairs.
	22	(2) The Board shall also ensure that:
	23	(a) all monies received by the Agency are properly accounted for;
	24	(b) all payments of monies are correctly made and properly
	25	authorized; and
	26	(c) adequate control is maintained over the Agency's property and its
	27	expenditure.
	28	(3) The Board shall cause to be prepared for each financial year, and
	29	not later than three months after the close of the financial year, a statement of
	30	accounts which shall include a report on the performance of the Agency during

1 that financial year, comprising of a balance sheet, a profit and loss account  
2 and application of funds statement.

3 **92.**-(1) The accounts of the Agency shall, in respect of each Audit  
4 financial year, be audited by the Auditor General of the Federation or by an  
5 auditor appointed by the Auditor General of the Federation.

6 (2) The Board shall ensure that within four months after the close  
7 of each financial year, the statement of accounts referred to in subsection (3)  
8 of section 93 of this Act is submitted for auditing.

9 (3) The Auditor General of the Federation or any auditor appointed  
10 by the Auditor General of the Federation shall have access to all books of  
11 accounts, vouchers and other financial records of the Agency and is entitled  
12 to any information and explanation required in connection with such books,  
13 vouchers or records.

14 (4) The Auditor General of the Federation shall, within two months  
15 after the receipt of the statement of accounts referred to in subsection (2) of  
16 this section, audit the accounts and deliver to the Board the audited account  
17 together with the Auditor's report.

18 (5) The Board, shall as soon as possible upon receiving the audited  
19 account deliver to the Minister a copy of the audited accounts together with  
20 the auditor's report referred to in subsection (4) of this section and cause the  
21 audited account and report to be published in two national daily newspapers.

22 **93.** -(1) The financial year of the Agency shall be in accordance Financial year  
23 with the Financial Year Act or in accordance with any other legislation  
24 passed by the National Assembly for that purpose.

25 (2) Except that the first financial year of the Agency may be a  
26 shorter period commencing on the date on which the Agency is established  
27 and ending as nearly as close as is possible to the financial year end for that  
28 particular year, but not later than four months thereof, but if established any  
29 time from October in any year the first financial year end shall be the  
30 financial year end for the next year.

Publication of performance reports	1	<b>94.</b> The Board shall not later than three months after the end of a
	2	financial year ensure that it prepares, and widely publishes an annual
	3	performance report containing and reflecting an assessment of the Agency's
	4	performance of its goals for the year, complaints received and dealt with and
	5	such other issues as the Minister may from time to time direct the Board to
	6	report to the public.
Annual report	7	<b>95.</b> The Agency shall cause to be prepared and submit to the Board
	8	within three months after the end of each financial year, an annual report on the
	9	activities and operations of the Agency for that financial year.
Power of Minister to issue directives	10	<b>96.</b> The Minister may issue directives of a general nature or relating
	11	generally to particular matters, but not any particular individual person or to
	12	any particular case, with regard to the exercise by the Agency of its functions.
	13	PART XII - MISCELLANEOUS PROVISIONS
Effect of revocation or termination of license	14	<b>97.</b> The revocation or termination of a license pursuant to the
	15	provisions of this Act shall not affect the validity of receipts issued under the
	16	license, and the Warehouse Operator shall continue to comply with the
	17	provision of this Act with regard to receipts validly issued.
Insurance of goods	18	<b>98.</b> -(1) Subject to regulations issued from time to time by the Agency,
	19	a Warehouse Operator shall subject to other provisions of this Act, ensure that
	20	goods in its custody are at all times insured against all common perils such as
	21	but not limited to loss by fraud, theft, fire, employee infidelity, disasters
	22	including drought, flooding, sabotage, internal explosion, windstorm and any
	23	other disasters or perils and such other perils as the Agency may determine by
	24	regulations made under this Act.
	25	(2) A Warehouse Operator shall keep exposed in a conspicuous place
	26	in the Warehouse, a notice in bold letters stating briefly the conditions under
	27	which the goods are insured under this Act.
	28	(3) A Warehouse Operator shall take prompt steps as may be
	29	necessary and proper to collect any money which becomes due under a contract
	30	of insurance entered into by the Warehouse Operator for the purpose of

1 fulfilling the insurance and bonding requirements under this Act, and shall  
2 as soon as the money is collected, promptly pay any person entitled to  
3 receive the money.

4 (4) A Warehouse Operator shall where appropriate for the purpose  
5 of fulfilling the insurance and bonding requirements under this Act, pay  
6 premiums, permit inspections and make reports as may be required under  
7 the terms of its contracts with insurance and bonding companies.

8 **99.** The Agency or its appointed agent may inspect any licensed  
9 Warehouse with a view to investigating and ascertaining the-

Inspection of  
Warehouses by  
the Agency

- 10 (a) storage facilities in the Warehouse;  
11 (b) classification of goods;  
12 (c) weighing arrangement;  
13 (d) certification of goods; and  
14 (e) compliance with the provisions of this Act

15 **100.-(1)** The Board may, by notice published in the Gazette  
16 classify a licensed Warehouse in accordance with its -

Classification  
of Warehouses

- 17 (a) single or group of commodities which it is licensed to store;  
18 (b) ownership;  
19 (c) location;  
20 (d) surroundings;  
21 (e) capacity;  
22 (f) conditions or other qualities; and  
23 (g) such other classification as the Board may from time to time  
24 prescribe.

25 (2) The Board may prescribe different types of licenses that may be  
26 issued relating to different classes of Warehouses with a view to maintaining  
27 standards.

28 **101.** The Agency shall, in consultation with the Board, by notice  
29 published in the Gazette, prescribe the fees to be charged in respect of-

Fees

- 30 (a) examination and inspection of Warehouses;

- 1 (b) licenses issued under the Act;
- 2 (c) renewal of licenses;
- 3 (d) issue of negotiable Warehouse Receipt books; and
- 4 (e) carrying out and performing such other functions conferred on it
- 5 under this Act or by regulations made pursuant to this Act.

Protection of  
the members  
of the Board and  
staff of the Agency

- 6 **102.** A member of the Board or any employee or other person
- 7 performing any function of the Agency under the direction of the Board shall
- 8 not be personally liable for any civil proceedings or for any act or omission
- 9 carried out in good faith, in accordance with the law, rules and regulations and
- 10 in the regular performance of his or her functions.

Regulations

- 11 **103.**-(1) The Board may make regulations generally for the carrying
- 12 out of the provisions and purposes of this Act and may, in particular make
- 13 regulations-
- 14 (a) prescribing the procedures and limits of negotiation of a
- 15 negotiable Warehouse Receipt;
- 16 (b) prescribing a standard format of a Warehouse Receipt;
- 17 (c) determining the standards or requirements for allowing a
- 18 Warehouse Operator to sell or dispose of goods, which are perishable or
- 19 hazardous;
- 20 (d) determining the manner of keeping depositors goods in a
- 21 Warehouse;
- 22 (e) determining goods which may be mixed in the Warehouse receipt;
- 23 (f) prescribing ways of recovering the Warehouse Operator's Lien by
- 24 sale of goods;
- 25 (g) prescribing conditions for the registration of the Warehouse;
- 26 (h) prescribing conditions that may be inscribed on the Warehouse
- 27 license;
- 28 (i) prescribing Warehouse registration and license application
- 29 procedure;
- 30 (j) prescribing Warehouse registration and license appeal procedure;

1 (k) prescribing the qualifications of the employees that may be  
2 employed by a Warehouse Operator;

3 (l) prescribing procedure for dispute resolution pursuant to this  
4 Act; and

5 (m) allowing Warehouse Operators to trade in goods they are  
6 licensed to store and prescribing detailed and strict conditions for such trade  
7 if and when allowed.

8 (2) Regulations made pursuant to subsection (1) shall be published  
9 in the Official Gazette.

10 **104.** In this Act, unless the context otherwise requires:

Interpretation

11 'Agency' means the Nigerian Independent Warehouse Regulatory Agency  
12 established under section 1 of this Act;

13 'appropriate authority' or Minister means the Minister in charge of trade and  
14 investment;

15 'Arbitral Panel or Panel' means the panel established under section 73;

16 'Board' means the governing board of the Agency established under section  
17 2 of this Act;

18 'bond', has the meaning ascribed to it by section 18 of this Act;

19 'Central Registry' means the Central Registry established under section 66  
20 of this Act;

21 'commodity' under this Act includes raw, conditioned, agricultural produce,  
22 solid minerals or products in liquid or gaseous form and such other goods as  
23 the Agency shall from time to time, following a viability study and after  
24 stakeholder consultation with approval of the Minister designate as  
25 commodities for storage in commercial Warehouses.

26 'commingle' means the storage of commodities by class, under  
27 circumstances other than identity preserved;

28 'conditioning' include the process of drying and cleaning of commodities;

29 'court' means the Federal High Court;

30 'depositor' means any person who deposits a commodity in a Warehouse for

- 1 storage, handling, or shipment, or who is the owner or legal holder of an  
2 outstanding Warehouse Receipt or who is lawfully entitled to possession of the  
3 commodity;
- 4 'delivery' means voluntary transfer of possession from one person to another  
5 'fungible goods' means goods of which any unit, from its nature or by  
6 mercantile custom, treated as equivalent of any other unit;
- 7 'goods' for the purposes of this Act shall mean commodities  
8 'holder' means a person who is in possession of a Warehouse Receipt whether  
9 negotiable or non negotiable, and who has proprietary interest in the goods;
- 10 'identity preserved' means the handling of a commodity in such a manner that  
11 guarantees the return of the actual quality and quantity of the commodity to the  
12 depositor;
- 13 'license' means a license issued under this Act and includes any renewals and  
14 amendments of the license except where the context otherwise requires;
- 15 'licenced Warehouse' means any Warehouse for which the Agency, subject to  
16 other terms and requirements of the Act, has issued a license;
- 17 'Minister' means the Minister responsible for trade and investment;
- 18 'order' means an order by endorsement on the Warehouse receipt;
- 19 'person' means any individual, corporation, two or more persons having a joint  
20 or common interest, or other legal or commercial entity;
- 21 'prescribe' means prescribe in the regulations;
- 22 'President' means the President of the Federal Republic of Nigeria;
- 23 'revocation' means the permanent removal of a Warehouse Operator's license  
24 by the Agency pursuant to the powers conferred on it under this Act;
- 25 'suspension' means the temporary removal of a license actuated by any action  
26 or measure taken pursuant to the provisions of this Act;
- 27 'Warehouse' or 'commercial Warehouse' under this Act mean any building,  
28 structure or other protected enclosure approved by the Agency to be used or  
29 useable, for the storage or conditioning of commodities or buildings used for  
30 storage purposes or including operation of a Warehouse which issue or purport

1 to issue Warehouse receipt;

2 'Warehouse Operator' means a person registered under this Act engaged in  
3 the business of operating a Warehouse for receiving, storing, shipping or  
4 handling of commodities for compensation and includes the agent or  
5 employee the scope of whose actual or apparent authority renders such  
6 person to exercise rights or become liable under the Act; and includes  
7 directors and shareholders of a limited liability company licensed under this  
8 Act;

9 'Warehouse Receipt' means a document of title to specific goods of a certain  
10 quality and quantity stored in a licensed, bonded and named Warehouse  
11 which may be negotiable or non-negotiable.

12 **105.** This Bill may be cited as the Warehouse Receipts and Other Short title  
Related Matters Bill, 2022.



## 1 SCHEDULE

## 2 MEETINGS OF THE BOARD

3 *Convening Meetings*

4 1.-(1) The Chairman shall convene the first meeting of the Board as  
5 soon as is practicable after the appointment and inauguration of the Board and  
6 thereafter the Board shall meet for the transaction of business at times and  
7 places that may be decided upon by the Board but the Board shall meet once  
8 every three months.

9 (2) The Chairman or, in the absence of the Chairman, a member of the  
10 Board appointed by the Board to act as Chairman may from time to time call a  
11 special meeting of the Board, or shall call a special meeting upon a written  
12 request by a majority of the members of the Board.

13 (3) The Chairman shall preside at all meetings of the Board and in his  
14 or her absence, the members present may appoint a member from amongst  
15 themselves to preside at that meeting.

16 *Quorum*

17 2. The quorum at a meeting shall be seven members.

18 *Decision Making*

19 3. Questions proposed at a meeting of the Board shall be decided by a  
20 majority of votes of members present and if there is equality of votes, the  
21 person presiding shall have a casting vote in addition to his deliberative vote.

22 *Disclosure of Interest*

23 4.-(1) A member of the Board who has any pecuniary interest in a  
24 matter being considered or about to be considered by the Board shall, as soon as  
25 possible after the relevant facts have come to his knowledge, disclose the  
26 nature of his interest to the Board.

27 (2) A disclosure of interest under subparagraph (1) of this paragraph  
28 shall be recorded in the minutes of the meeting of the Board and the member  
29 making the disclosure shall not, unless the Board otherwise determines in  
30 respect of that matter-

1 (a) be present during any deliberation on the matter by the Board;

2 and

3 (b) take part in the decision making of the Board on the matter.

4 (3) For the purpose of the making of a decision by the Board under  
5 subparagraph (2) of this paragraph the member who has made the disclosure  
6 shall not-

7 (a) be present during the deliberations of the Board for the making  
8 of that determination; and

9 (b) influence any other member or take part in the making of the  
10 determination by the Board.

11 *Co-option of Persons to Meetings of the Board*

12 5.-(1) The Board may co-opt any person to any meeting of the  
13 Board to assist it on any matter if the Board is satisfied that such person's  
14 qualifications and experience are likely to benefit the Board.

15 (2) A person co-opted to assist the Board under subparagraph (1) of  
16 this paragraph is entitled to take part in the proceedings of the Board at the  
17 meeting concerning the matter in connection with which he or she is co-  
18 opted, but is not entitled to vote or take part in other proceedings of the  
19 Board.

20 *Minutes of Meetings*

21 6.-(1) The Board shall cause the minutes of its meetings to be  
22 recorded and kept and the minutes of each meeting shall be reviewed and  
23 adopted by the Board at the next meeting and signed by the Chairman of the  
24 meeting.

25 (2) The Chairman of the Board shall submit to the Minister a copy  
26 of the minutes of each meeting as soon as the minutes have been reviewed  
27 and adopted.

28 *Board to Regulate its Own Procedure*

29 7. Subject to the provisions of this Schedule, the Board may  
30 regulate its own proceedings.

1 *Seal of the Agency*

2 8. -(1) The Common seal of the Agency shall be such device and in  
3 such form as the Board may determine and shall be authenticated by the  
4 signatures of the Director-General and the Secretary.

5 (2) In the absence of the Director-General, the person performing the  
6 functions of the Director-General shall sign.

7 (3) The signature of the Director-General shall be independent of the  
8 signing by any other person as a witness.

9 (4) Every document purporting to be an instrument issued by the  
10 Agency and to be sealed with the seal of the Agency authenticated in the  
11 manner prescribed in subparagraphs (2) and (3) of this paragraph shall be  
12 received in evidence and be deemed to be such an instrument without further  
13 proof unless the contrary is shown.

14 (5) The seal of the Agency shall be kept in the custody of the  
15 Secretary.

EXPLANATORY MEMORANDUM

This Act seeks to:

(a) establish the Nigerian Independent Warehouse Regulatory Agency to regulate the operations of licensed warehouses and to provide a regulatory framework for trading in warehouse receipts and for other related matters;

(b) enable depositors store agricultural or other commodities in commercial warehouses and upon issue of negotiable warehouse receipt by the warehouse, be able to use it as collateral to obtain finance from a financial institution; and

(c) make warehouse receipt valid negotiable instruments.