

Introduction

- 1) The benefit which an efficient and secure warehouse receipt system (WRS) will bring into the commodity chain are enormous. Those who stand to benefit include:
 - BANKS AND FINANCIAL INSTITUTIONS: seeking secure and easily liquidated collateral.
 - TRADERS: seeking storage and credit.
 - INPUT SUPPLIERS: seeking finance for stockholding.
 - FARMERS: seeking higher prices, accurate weights and measures and credit.
 - STATE AGENCIES AND FOOD AID MANAGERS: seeking to procure and recycle stocks more efficiently.

How do we Achieve Efficient and Secure WRS

1. Development of trade practices and customs that gain acceptance over time.
 - So far, no recognisable practices have evolved around warehouse receipts.
 - Customary pledge:
 - with its limitations
 - not appropriate for modern commerce
 - no receipts are involved
 - Common law pledge:
 - goods may be pledged by a buyer to a lender, with a right of the buyer to sell coupled with a right of lien in the lender under the management of a Collateral Manager.

- receipts are not transferable
- title to goods not clearly vested

- The contract of bailment:
 - a storage contract: the warehouse being liable for negligence and loss, the depositor being liable for storage charges.
 - although receipts are available, such do not constitute documents of title and are not transferable.

2. By Legislation:

- Introduction of legislation: legal framework around which an efficient and secure WRS would develop.
- The WRS
 - clear rules, ascertainable and enforceable
 - deals with risks and how these can be mitigated
- Education for stakeholders to make use of the law.

Legal Issues Affecting Warehouse Receipts

- 1) Whether laws recognise a security interest in stored commodities.
- 2) Whether recognition of security interest in warehouse receipts provide lenders protection with respect to third parties.
- 3) Whether laws recognise a warehouse receipt as a document of title.
- 4) Whether laws recognise a warehouse receipt as a transferable and negotiable instrument.
- 5) Whether laws recognise that a security can be given in goods that are comingled as part of undifferentiated bulk.

Position In Ghana

No legislation which specifically recognises:

a) Security interest in stored commodities

b) Provide any protection to lenders in respect of third party interests in warehouse receipts

c) Documents of title

d) Transferable or negotiable instruments

e) Security may be given in respect of comingled goods

Need for Legal Recognition?

- Commercial transaction that creates a warehouse receipt is not a sale. It is a receipt for storage issued by a warehouse keeper to the owner or depositor of goods.
- Security interest may be created in the goods where a lender is prepared to advance credit using the stored commodities as collateral.
- Without a regulatory legal regime, the lender may be exposed where a third party's rights intervene, i.e. warehouse keeper exercises his lien, bonafide purchaser acquires the goods from the warehouse keeper, or goods subject to attachment etc.

- Warehouse receipt could be used as a document of title only if legal recognition is given. Without legal recognition of a warehouse receipt as a document of title, the owner of the goods will have to produce the commodities physically and a lender or even a purchaser deals on the basis of trust.
- Warehouse receipts have the potential of being transferred from the holder to another or can be negotiated. However, in the absence of legal recognition, no one would accept a transfer or negotiate it.
- Worse when goods are comingled.

Commercial Transactions Similar to Warehouse Receipts Based on Legal Framework, Local Legislation, Recognised Commercial Practice and International Convention.

- Bill of Lading - carriage of goods.
- Bill of Exchange - cheques, promissory notes, debentures.
- Shares - share certificates.
- Land title documents, Mortgages.
- Letters of Credit.
- Life Assurance Policies.

- These and others have acquired the status of acceptable securities, documents of title or negotiable instruments because there are laws that regulate their creation, validity, etc.

Land

- Lease – a term of years, laws regulate capacity, form, content, plan of the land, how executed, registration, the registration authority, public search of title.
- A verifiable document; acceptable to the lender, document of title, enforceable, commercial, transferrable.

Warehouse Receipts – Commercial Instruments as a result of legislation

Legal regime

- Warehousing
 - licensed? what kind of premises? what kinds of equipment?
 - what are the qualifications, obligations (duty of care, duty to deliver), rights and liabilities.
- Issue of warehouse receipts
 - who may issue,
 - what are its contents.
- Negotiable or not?
 - endorsement by holder,
 - transferable?

- Risks and how mitigated
 - offences
 - fraudulent receipts

- Fungible goods
 - circumstances where comingling is allowed.
 - ownership in all depositors
 - each depositor entitled pro rata

- Protection of goods covered by a negotiable warehouse receipt from attachment or execution and liquidation.

- The warehouseman's lien
 - what should it include
 - charges for storage, insurance, labour, weighing, sale expenses, etc.
 - how is the lien lost
 - how is it satisfied
- Perishable and hazardous goods

Negotiation and transfer of receipts

- How negotiated?
 - by delivery to bearer,
 - what constitutes endorsement
 - what does the person acquire by the negotiation?

- Transfer of receipt
 - how is it effected? by delivery to purchaser?

Conclusion

- Modern commerce thrives on an environment that creates confidence and assures that a transaction is enforceable in accordance with its terms.
- This confidence depends on a legal platform that sets standards of conduct for dealers in terms of specific laws that regulate the subject matter.
- Warehouse receipt system is new. Deliberate statutory intervention is required to make it function. Such laws should be clear, verifiable, drafted in simple language.