Recommendations related to the "The Warehousing (Development and Regulation) Amendment Bill, 2023"

S. No.	Particulars (clause, Sub-section, Section)	Views/Comments/Suggestions/Remarks/Recommendations
1.	Sub-section (1) of Section 3: "Requirements of registration of warehouses" under Chapter II.	The Warehousing (Development and Regulation) Act, 2007 hereinafter referred to as the 'principal act', allowed the Warehouses to mandatorily register & obtain certification from Accreditation agency to issue both negotiable and non-negotiable warehouse receipts. The current amendment empowers the Central Government to determine the registration process of Warehouses that can issue non-negotiable warehouse receipts through the executive route instead of letting the independent Warehousing Development & Regulatory Authority decide the merit for such a registration on a case-to-case basis. This might undermine the service quality and rights of depositors and holders of the goods. Hence, it is suggested that this amendment be withdrawn.
2.	Sub-section (6) of Section 10: "Lien of Warehouseman on goods" under Chapter III.	The amendment removes the provision for a 'written notice' to be given by the warehouseperson to the user regarding sale of user's goods under his/her possession for valid reasons listed egregiously undermines the ownership and re-possession rights of the users. Hence, this amendment should be removed and no sale, re-sale of goods owned/possessed by the user should be allowed without giving a 'formal & written notice' to the user.
3.	Sub-section (1) of Section 11: "Warehouse Receipts" under Chapter IV.	The amendment removes the legislative binding on authority(ies) to issue Warehouse receipts in a specific logical format and to have a record of the goods being stored and other particulars associated. At the outset, it might seem administratively convenient to remove this to provide a greater degree of flexibility to the Central Government & the Authority, but, it is not a sound approach. The 'principal act' already has a provision for including other fields/choices/options to capture additional characteristic data pertaining to any act of storage of goods in a warehouse and, hence, is adequate.

4.	Section 23: "Issue of Duplicate Receipt" under Chapter IV.	The amendment proposes to omit this section. It is strongly requested that this section be not omitted. The amendment already proposes to remove the issuance of physical receipts and in favour of the issuance of fully electronic receipts. There are certain major critical digital literacy and utility gaps in India today. A user might lose access to their electronic receipts for myriad reasons and hence might wish to seek remedy through obtaining duplicate warehouse receipts. Removing such a remedy might lead to an adverse impact on the livelihood of the users.
5.	Section 25: "Composition of Authority" under Chapter V.	Under Clause (c) of Section 25 we propose that there be 6 part-time members instead of 3 as follows, • **2 part-time members** nominated by Central Government as mentioned in the draft. • **1 part-time member each** from **SEBI** (Securities & Exchange Board of India), **RBI** (Reserve Bank of India), **IRDAI** (Insurance Regulatory & Development Authority of India) and **NABARD** (National Bank for Agriculture & Rural Development). Members from these 4 premier institutions carry practical expertise w.r.t opportunities, threats and challenges associated with Warehousing Market & Business at the block level and can augment the response mechanism of the Authority.
6.	Sections 35A, 35B, 35C, 35D & 35E of Chapter VI.	In all these newly added sections, and, wherever required across the whole act, it is suggested to replace "Warehousing Market" with "Warehousing Market and Warehousing Business".
7.	Sub-section (12) of Section 35B: "Power to Investigate" under Chapter VI.	After the phrase "Code of Criminal Procedure, 1973 (2 of 1974)", it is suggested to insert "Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023)."
8.	Sub-section (1) of Section 35E: "Power to recover monetary penalty and other costs" of Chapter VI.	Under Clauses (a), (c) and (d), it is suggested to insert the phrase "self-acquired" before phrases "movable property", "immovable property" and "movable and immovable properties" respectively for the following reasons,

		1. A mature, liberal constitutional democracy should not build government/public institutions and systems that take control over the ownership and possession rights of any family's ancestral movable or immovable properties for the offences (however serious they might be) committed by one of its members, unless, serious large-scale financial frauds are involved as determined by laws like Fugitive Economic Offenders Act, 2018. **2.** In addition, Warehousing Market & Warehousing Business is still a long way to grow in India and these sort of serious state penalties are a hindrance to the over-all growth of the industry.
9.	Sub-section (1) of Section 37: "Constitution of Fund" of Chapter VII.	The amendment proposes to omit Clause (c) of Sub-section (1) of Section 37 from the 'principal act'. This original clause ensures that all the penalties levied and collected for various discrepancies and offences under the 'principal act' be credited to Warehousing Development and Regulatory Authority Fund, a dedicated fund created under Section 37 for the purpose of fulfilling the core and stated objectives of the Authority. By transferring all such amounts to the Consolidated Fund of India as proposed through insertion of Section 37A instead of this dedicated fund, the Authority will be deprived of funds to carry out its affairs in a stringent and timely manner. Therefore, we request that this amendment be withdrawn.
10.	Section 37A: "Crediting sums realized by way of penalties to Consolidated Fund of India" of Chapter VII.	The amendment's proposal to add a new Section 37A to transfer all the penalties levied and collected for various discrepancies and offences under the Act to the Consolidated Fund of India (a Government of India's fund) instead of the Warehousing Development and Regulatory Authority Fund (a dedicated fund) is unsound. By doing so, the Authority shall be deprived of funds to carry out its affairs in a stringent and timely manner and might be crippled in terms of its overall functioning. Therefore, we request that this amendment be withdrawn.

11.	Sub-section (2) of Section 51: "Power of Authority to make regulations" of Chapter XI.	The amendment has Clause (b) under Sub-section (2) which is speaking in relevance to a non-existing Clause (a) of Sub-section (1) of Section 8 from both 'principal act' and this amendment draft. We request clarification on this.
12.	Sub-section (2) of Section 51: "Power of Authority to make regulations" of Chapter XI.	Request not to omit Clause (e) for the reasons mentioned above in this table.
13.	In Section 43 and across all other Sections where a penalty of 1 Crore Rupees has been prescribed.	It is suggested that the maximum prescribed penalty, not considering penalty amounts measured in relation/accordance with the value of goods stored in a warehouse, be reduced to 50 Lakh Rupees instead of 1 Crore Rupees. The reason is that Rupees 1 Crore is too huge an amount which puts the Warehousing Market and Warehousing Business on heels and shall lead to cartelization and inflation of storage costs adversely impacting users and the Indian markets.

*These inputs were prepared along-with **Ms. Sarah Gairola**, a public policy research intern at our organization.*

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2. *CRFHGR duly certifies that it has no conflict of interest regarding the purpose and objects of this draft amendment.*