

# Warehouse receipts system legal framework: best practices to enable structured trade



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# Challenges of promoting structured trade in Africa

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# Public sector roles in promoting structured trade

## Enabling role

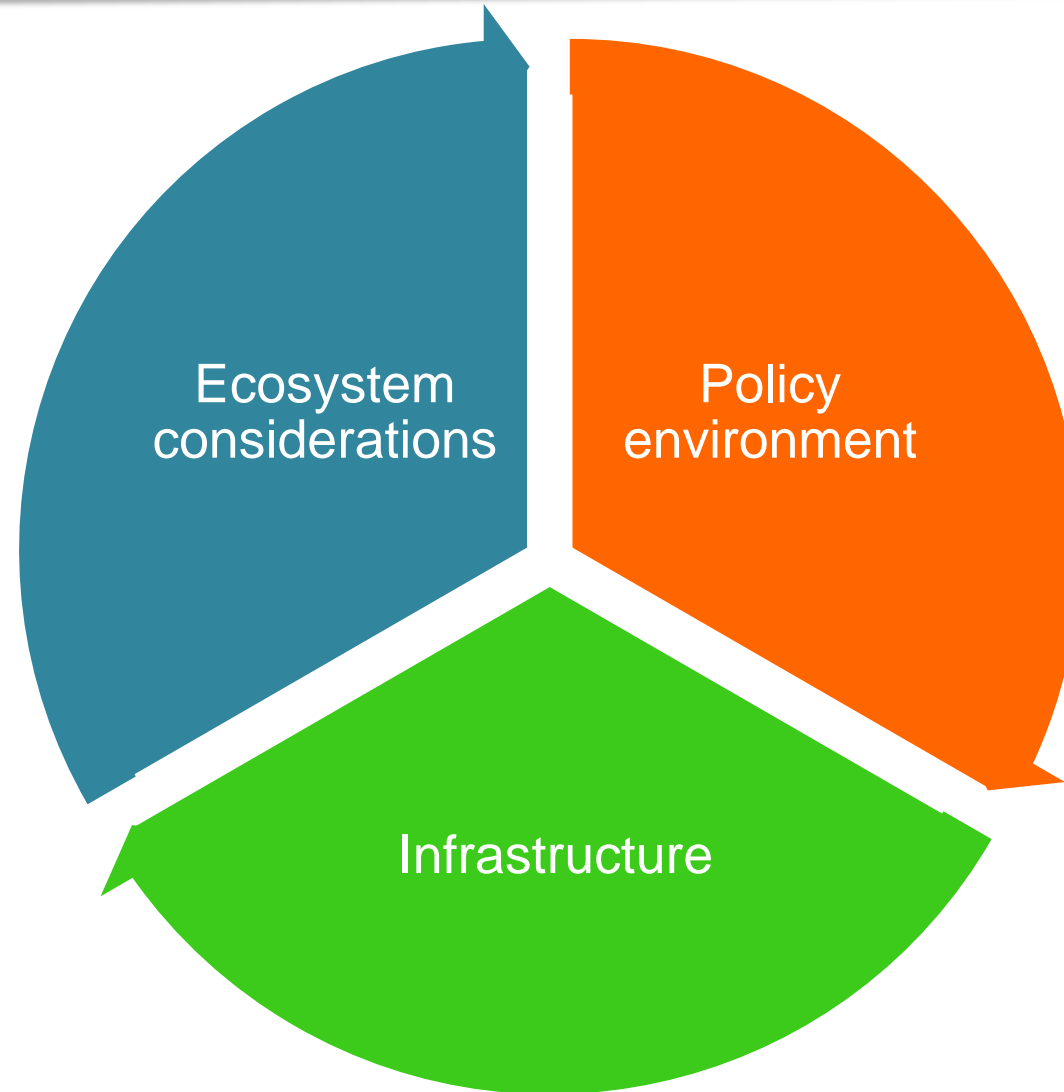
- Providing an external legal environment that is predictable, accessible, enforceable and fair
- Where required, driving the development of physical infrastructure without which market actors cannot properly function (e.g. regulatory agencies, warehousing, transportation, telecommunications, information networks, etc.)

## Oversight role

- ◆ Underpin exchanges in their self-regulatory capacity to:
- ◆ *Discipline those who try to manipulate the markets for their own benefit*
- ◆ *Protect market participants from the unscrupulous practices of others*
- ◆ *Underpin system integrity and stability*

# Creating an enabling environment to promote structured trade

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# Market infrastructure to address to promote structured trade

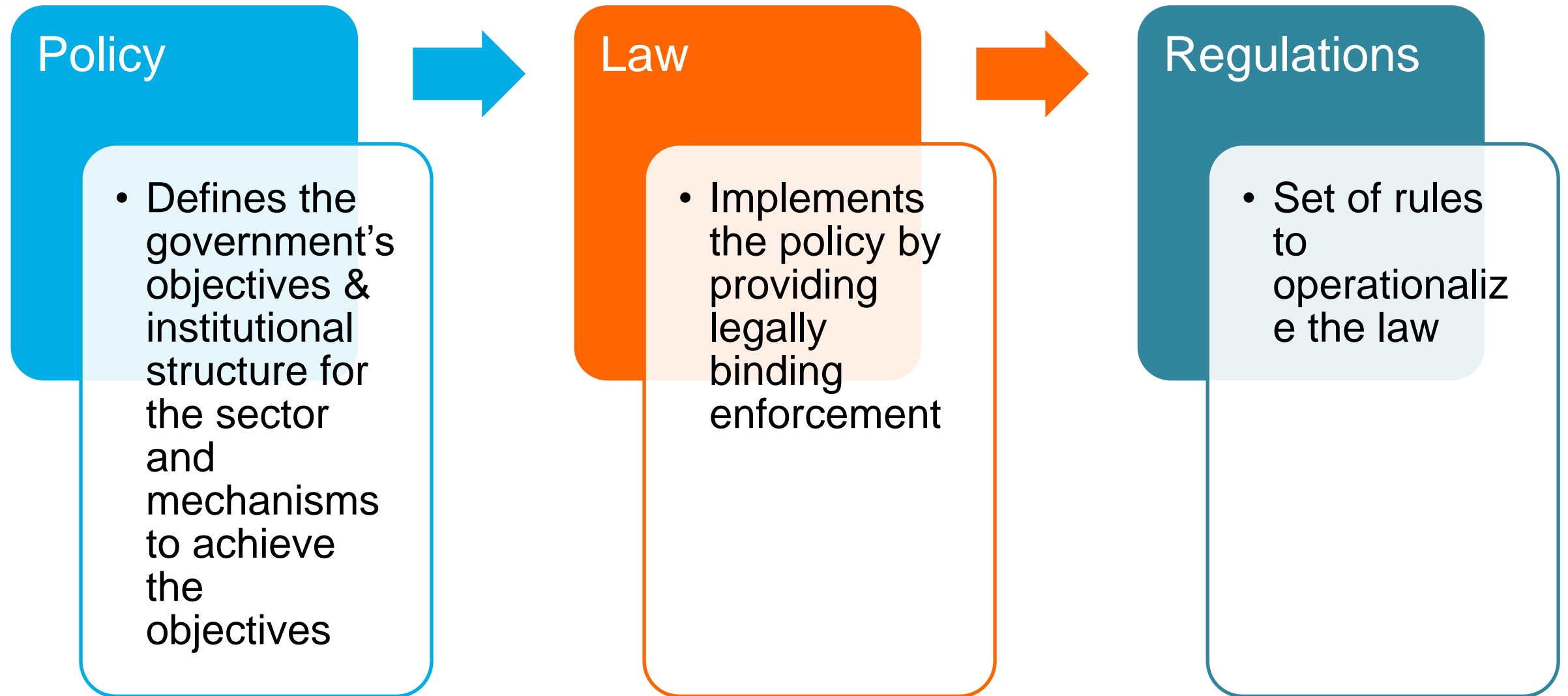


# Ecosystem considerations

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- ◆ Friendly tax regimes
- ◆ Assurance of non-discriminatory access to markets
- ◆ Non-interference with the functioning of the markets
- ◆ Non-discrimination amongst investors
- ◆ Honoring of internationally accepted standards
- ◆ Abiding by contractual undertakings
- ◆ Ensuring sector is kept free of corruption

# Logical structure of the legal framework



# The purpose of regulation (in line with IOSCO)

## Market integrity

- Market rules and procedures should be enforced in a manner that is fair, efficient and transparent
- Market structures should not unduly favor some market users over others
- Regulation should detect, deter and penalize market manipulation

## Reduction of systemic risks

- Regulation should aim to reduce the risk of default by market actors or intermediaries
- Where default occurs, regulation should seek to reduce the impact of that failure across the system as a whole through effective and legally secure arrangements for default handling

## Investor protection

- Investors should be protected from misleading, manipulative or fraudulent practices, including insider trading, front running or trading ahead of customers, and the misuse of client assets



# Components of the regulations

## Securities functions

- Provides the statutory basis for the regulatory agency, its powers, accountability and governance norms, etc
- Sets out the framework for licensing of market participants
- Specifies provisions for delegating powers to self-regulatory organizations (SROs)
- Provides scope for oversight, investigation and sanctioning of market participants

## Fiduciary Provisions

- Ensures adequate safekeeping of deposited funds, margins, collaterals & accruals
- Ensures segregation of client funds separately from broker's proprietary funds
- Ensures intermediaries make all required disclosures to clients
- Prevents abuses of fiduciary position (e.g. front-running, bucket-shopping)

## Banking / Payments System Law

- Ensures that the accredited clearing banks can effectively perform their function
- Provides due recognition and treatment of appropriate forms of margin collateral
- Sets out prudential requirements to ensure risk-adjusted capital adequacy

## Commercial function

- Provides for the sanctity of contracts, including their enforceability through the legal system

# Components of regulations (Cont.)

## Insolvency function

- Exempts insolvent parties' assets held by clearinghouse - margin collateral and guarantee fund contributions - from being frozen or seized by parties other than the clearinghouse (i.e. administrators, liquidators)
- Allows positions to be transferred from insolvents to other parties

## Financial intelligence and anti-money-laundering

- Provides robust protection against use of markets for financing of crime/terrorism or money-laundering, including upholding compliance with Know Your Customer principles
- Provides certainty to market participants about the application of such rules
- Avoids unnecessary impediments to market functioning

## Taxation

- Does not unreasonably inhibit market development and functioning (i.e. funds transfers, international flows, deliveries, etc)
- Applies appropriate, product/participant-neutral tax treatment

## International Provisions

- Provides certainty of treatment for cross-border flows of commodity, capital and currency
- Non-discrimination between domestic and international market users
- Provides for information-sharing and other forms of collaboration between regulators in different jurisdictions

# Strengthening WRS Legal Reforms in Ghana: Role of the Ghana WRS Project

# Ghana WRS Project objectives

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- Build the capacity of WRS regulatory authorities and market participants (i.e., GGC and other private sector players).
- To improve smallholder farmers' access to finance to boost productivity, production and improved farm performance.
- To improve the functioning of agricultural commodities markets through improved risk management, increased transparency and improved information
- To improve farmer livelihoods through transparent price discovery, and improved market access by encouraging competition along the agricultural value chain

# Project Description – Project components

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## Strengthening the WRS regulatory Framework

- Reform the existing legal framework to include electronic warehouse receipts, negotiable receipts and management of leased warehouses

## Pre/post awareness on regulations enactment

- Build awareness for parliamentary committees and key stakeholders on the legal and regulatory requirements of all players

## TA to Strengthen the Warehouse Receipt System

- Support the WRS regulatory authority in warehouse licensing, inspection, surveillance, supervision, standardization, grading, regulations, grading, rules, etc.

## Stakeholder Training and Capacity Building

- Build capacity and train key stakeholders on the cost and benefits of WRS and structured commodity trading.

## Warehouse Management and WRS IT Software System

- Deploy an electronic warehouse receipt system (eWRS) that supports negotiable instruments and a secured electronic product tracking platform.

# Expected Development Results

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## Farmer level

- Improved access to finance for farmers and SMEs and enhanced linkage by small farmers and traders with markets
- Increased market power of small-holders by enabling them to choose the time to sell their crops at competitive prices

## Agriculture and economy wide levels

- Improved agricultural infrastructure through investments in transport, warehouses and storage, market information
- Smoothened market prices by facilitating sales throughout the year at lower transaction costs by guaranteeing grain quantity/quality
- Improved functioning of agricultural commodities markets through better risk management, transparency & enhanced information flow
- Strengthened ancillary businesses such as transport, storage, logistics, inventory management, MIS, standards, training and certification