



# LAWS OF MALAYSIA

REPRINT

**Act 212**

## **HIRE-PURCHASE ACT 1967**

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### **HIRE-PURCHASE ACT 1967**

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## Act 212

### HIRE-PURCHASE ACT 1967

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## LAWS OF MALAYSIA

### Act 212

#### HIRE-PURCHASE ACT 1967

An Act to regulate the form and contents of hire-purchase agreements, the rights and duties of parties to such agreements and to make provisions for other matters connected therewith and incidental thereto.

[11 April 1968; P.U. (B) 150/1968]

#### PART I

##### PRELIMINARY

#### Short title and application

1. (1) This Act may be cited as the Hire-Purchase Act 1967.

(2) This Act shall apply throughout Malaysia and in respect only of hire-purchase agreements relating to the goods specified in the First Schedule.

(3) *(Deleted by Act A1234).*

(4) This Act shall apply only to hire-purchase agreements entered into after the coming into operation of the Act.

#### Interpretation

2. (1) In this Act, unless the context otherwise requires—

“action” includes counter-claim and set off;

“base lending rate” means the minimum interest rate based on owner’s cost of funds and other administrative costs;

“consumer goods” means goods purchased for personal, family or household purposes;

“contract of guarantee” means, in relation to any hire-purchase agreement, a contract made at the request, expressed or implied, of the hirer to guarantee the performance of the hirer’s obligations under the hire-purchase agreement, but does not include the dealer or a person engaged at the time of giving of the guarantee in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement, and the expression “guarantor” shall be construed accordingly;

“Controller”, “Deputy Controller” and “Assistant Controller” mean respectively, the Controller of Hire-Purchase, a Deputy Controller of Hire-Purchase and an Assistant Controller of Hire-Purchase appointed under subsection 3(1);

“dealer” means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged;

“goods” includes any replacements or renewals by the hirer of any part or parts thereof and any accessories added or additions made thereto by the hirer during the period of the hiring;

“hire-purchase agreement” includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement—

- (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- (b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

“hire-purchase price” means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

“hirer” means the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have passed by assignment or by operation of law;

“Minister” means, unless otherwise stated, the Minister for the time being charged with the responsibility for consumer affairs;

“owner” means a person who lets or has let goods to a hirer under a hire-purchase agreement and includes a person to whom the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law;

“prescribed” means prescribed by the Minister under this Act;

“statutory rebate”—

(a) in relation to terms charges—

(i) means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or

(ii) where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month—means the amount of interest attributable to the period of complete months still to go under the agreement;

(b) in relation to insurance, means the sum of—

- (i) the amount of premium paid in respect of any annual period not yet commenced; and
- (ii) the amount of premium paid in respect of the current annual period less the amount of premium which would have been paid at the insurers short period rates for the period which the policy has been in force provided no claim has arisen during this period;

“third-party insurance” means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle being insurance required by law;

“vehicle registration fees” means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under this Act in connection with the registration and use of a motor vehicle, including any amount payable for third-party insurance.

(2) Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of this Act, be deemed to be a payment of that part of the hire-purchase price.

### **Appointment of officers**

**3.** (1) The Minister may appoint a Controller of Hire-Purchase and such number of Deputy Controllers of Hire-Purchase, Assistant Controllers of Hire-Purchase and other officers as may be necessary for the purposes of this Act.

(2) The Controller shall, subject to the general direction and control of the Minister, perform the duties and exercise the rights and powers imposed and conferred upon him by this Act and any regulations made thereunder.

(3) The Deputy Controller, Assistant Controllers and other officers appointed under subsection (1) shall be under the control and direction of the Controller.

(4) A Deputy Controller may exercise all the powers conferred and duties imposed upon the Controller under this Act except any powers or duties expressed to be exercisable by the Controller personally.

(5) The Controller or Deputy Controller may perform such duties and exercise such powers and functions conferred upon an Assistant Controller by this Act or any regulations made thereunder.

(6) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

## PART II

### FORMATION AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

#### **Requirements relating to hire-purchase agreements**

**4.** (1) Before any hire-purchase agreement is entered into in respect of any goods—

(a) in a case where negotiations leading to the making of the hire-purchase agreement is carried out by any person who would be the owner under the hire-purchase agreement to be entered into, or by any person, other than the dealer, acting on his behalf, such person shall serve on the intending hirer a written statement duly completed and signed by him in accordance with the form set out in Part I of the Second Schedule;

(b) in a case where negotiations leading to the making of the hire-purchase agreement is carried out by a dealer, such dealer shall—

(i) serve on the intending hirer a written statement duly completed and signed by him in accordance with the form set out in Part I of the Second Schedule; and

(ii) at any time after the service of the written statement referred to in subparagraph (i) but before the hire-purchase agreement is entered into, serve on the intending hirer a written statement duly completed

and signed both by him and the prospective owner in accordance with the form set out in Part II of the Second Schedule.

(2) The written statements referred to in subsection (1) shall be served by delivering it in person to the intending hirer or his agent who shall acknowledge receipt of the same by signing under his hand at the appropriate column contained therein.

(3) Any person who has been served with the written statement or statements referred to in subsection (1) shall not be under any obligation to enter into any hire-purchase agreement and no payment or other consideration shall be required from him in respect of the preparation or service of such statement or statements, as the case may be.

(4) A hire-purchase agreement entered into in contravention of subsection (1) shall be void.

(5) An owner who enters into a hire-purchase agreement and a dealer who carries out negotiations leading to the making of a hire-purchase agreement that does not comply with subsection (1), irrespective of whether such hire-purchase agreement is void or otherwise, shall be guilty of an offence under this Act.

(6) Where a person upon whom a written statement or statements referred to in subsection (1) have been served is subject to any obligation to enter into any hire-purchase agreement to which such written statement or statements relate or is required to make any payment or other consideration in respect of the preparation or service of such statement or statements, as the case may be, any person who imposed such obligation or requirement shall be guilty of an offence under this Act.

(7) The Minister may, by order, amend, vary, delete from, or add to, Part I and Part II of the Second Schedule.

### **Hire-purchase agreement to be in writing**

**4A.** (1) A hire-purchase agreement in respect of any goods specified in the First Schedule shall be in writing.

(1A) A hire-purchase agreement shall be in the national language or English language.

(2) A hire-purchase agreement that does not comply with subsections (1) and (1A) and shall be void.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsections (1) and (1A) shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

**Hire-purchase agreement to be signed, etc.**

**4B.** (1) Every hire-purchase agreement shall be signed by or on behalf of all parties to the agreement.

(2) No owner, dealer, agent or person acting on behalf of the owner shall require or cause any intending hirer or his agent to sign a hire-purchase agreement or any other form or document relating to a hire-purchase agreement unless such hire-purchase agreement, form or document has been duly completed.

(2A) No owner shall deliver or cause to be delivered to any dealer, agent or person acting on behalf of the owner a hire-purchase agreement or any other form or document relating to a hire-purchase agreement which has not been duly completed.

(3) A hire-purchase agreement that contravenes subsections (1), (2) and (2A) shall be void.

(4) An owner, dealer, agent or person acting on behalf of the owner who—

(a) enters into a hire-purchase agreement in contravention of subsection (1);

(b) requires or causes an intending hirer or his agent to sign a hire-purchase agreement in contravention of subsection (2); or

(c) delivers or causes to be delivered a hire-purchase agreement in contravention of subsection (2A),

shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

**Contents of hire-purchase agreement****4c. (1) Every hire-purchase agreement—****(a) shall—**

- (i) specify a date on which the hiring shall be deemed to have commenced;
- (ii) specify the number of instalments to be paid under the agreement by the hirer;
- (iii) specify the amounts of each of these instalments and the person to whom and the place at which the payments of these instalments are to be made;
- (iv) specify the time for the payment of each of those instalments;
- (v) contain a description of the goods sufficient to identify them;
- (vi) specify the address where the goods under the hire-purchase agreement are;

**(b) where any part of the consideration is or is to be provided otherwise than in cash, shall contain a description of that part of the consideration;****(c) shall set out in a tabular form—**

- (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (in this Act referred to and in the agreement to be described as “cash price”);
- (ii) the amount paid or provided by way of deposit (in this Act referred to and in the agreement to be described as “deposit”) showing separately the amount paid in cash and the amount provided by any consideration other than cash;
- (iii) any amount included in the total amount payable to cover the expenses of delivering the goods or any of them or to the order of the hirer (in this Act referred to and in the agreement to be described as “freight”);

- (iv) any amount included in the total amount payable to cover vehicle registration fees in respect of the goods (in the agreement to be described as “vehicle registration fees”);
- (v) any amount included in the total amount, payable for insurance in respect of the goods or any of them;
- (vi) the total of the amounts referred to in subparagraphs (i), (iii), (iv) and (v) less the deposit;
- (vii) the amount of any other charges included in the total amount payable (in this Act referred to and in the agreement to be described as “terms charges”);
- (viii) the annual percentage rate for terms charges which shall be calculated in accordance with the formula set out in the Seventh Schedule;
- (ix) the total of the amounts referred to in subparagraphs (vi) and (vii) of this paragraph (in this Act referred to as “the balance originally payable under the agreement”); and
- (x) the total amount payable;

(d) shall not contain any particulars which differ in any material way from the particulars contained in the written statement or statements served on the hirer pursuant to paragraph 4(1)(a) or 4(1)(b), as the case may be.

(1A) Paragraph (1)(d) shall not apply where in the hire-purchase agreement the terms charges are at a variable rate.

(1B) Where in a hire-purchase agreement the terms charges are at a variable rate, the following items shall be specified in the hire-purchase agreement based on the terms charges calculated in accordance with the base lending rate applicable at the time the hire-purchase agreement is entered into:

- (a) the number of instalments to be paid under the agreement by the hirer;
- (b) the amount of each of these instalments;

(c) the annual percentage rate of terms charges which shall be calculated in accordance with the formula set out in the Seventh Schedule; and

(d) the balance originally payable under the agreement.

(2) A hire-purchase agreement that contravenes subsection (1) shall be void.

(3) An owner who enters into a hire-purchase agreement in contravention of subsection (1) shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

### **Separate agreement for every item of goods**

**4D.** (1) There shall be a separate hire-purchase agreement in respect of every item of goods purchased under this Act.

(2) A hire-purchase agreement that does not comply with subsection (1) shall be void.

(3) An owner who enters into a hire-purchase agreement that does not comply with subsection (1) shall, notwithstanding that the hire-purchase agreement is void, be guilty of an offence under this Act.

(4) For the purposes of this section, any goods which are essentially similar or complementary to each other and sold as a set shall be regarded as an item.

### **Motor vehicle registration certificate**

**4E.** (1) Where the goods comprised in a hire-purchase agreement is a motor vehicle, a hirer may make a request in writing to an owner to keep the registration certificate of the motor vehicle.

(2) The owner shall, upon the request of the hirer under subsection (1), furnish the registration certificate of the motor vehicle to the hirer.

(3) For the purpose of subsection (1), registration certificate includes registration book.

(4) An owner who contravenes subsection (1) shall be guilty of an offence under this Act.

**Altered or modified motor vehicle**

**4F.** (1) A hire-purchase agreement shall not be entered into where the goods comprised in the hire-purchase agreement is a motor vehicle which has been altered or modified in its construction and structure.

(2) A hire-purchase agreement that contravenes subsection (1) shall be void.

**Declaration on second-hand motor vehicle**

**4G.** (1) Where goods to be comprised in a hire-purchase agreement is a second-hand motor vehicle, the person who intends to enter into the hire-purchase agreement in respect of such second-hand motor vehicle shall declare in writing any defects of the second-hand motor vehicle in accordance with the inspection report by the relevant authority determined by the Controller.

(2) For the purpose of subsection (1), “defect” includes defect to the mechanical or operational system, construction, structure and build-up and fitting of the motor vehicle.

(3) Any person who contravenes this section shall be guilty of an offence under this Act.

**Copy of documents to be served on hirer**

**5.** (1) Within twenty-one days after the making of a hire-purchase agreement, the owner shall serve or cause to be served on the hirer and the guarantors a copy of the agreement each.

(1A) (*Deleted by Act A1384*).

(2) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within twenty-one days after he has received a request in writing from the hirer, supply to the hirer a copy of any memorandum or note of the agreement—

- (a) on payment by the hirer of the prescribed fee; or
- (b) where no fee is prescribed, one free copy, and there after a fee as may be prescribed shall be charged for the supply of a second or subsequent copy thereof.

(3) Where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance in respect of the goods, the owner shall serve or cause to be served on the hirer forthwith a copy of the insurance payment receipt and, within seven days of receipt of the policy, a copy of the policy or statement in writing setting out the terms, conditions and exclusions of the policy that affect the rights of the hirer.

(4) Any person who contravenes this section shall be guilty of an offence under this Act.

6. (*Deleted by Act A813*).

## PART IIA

### OPTION TO HIRER

#### **Option to hirer**

6A. (1) An owner shall provide an option to the hirer for the terms charges under a hire-purchase agreement to be at a fixed rate or at a variable rate.

(2) A variable rate of terms charges shall be quoted at a margin percentage above the base lending rate.

#### **Right of owner to revise the base lending rate**

6B. (1) Where in the hire-purchase agreement the terms charges are at a variable rate, the owner may revise the base lending rate at any time during the continuance of the agreement.

(2) Where the owner has revised the base lending rate, the rate and total amount of terms charges and the amount of each instalment or the number of instalments under the hire-purchase agreement shall be revised accordingly.

(3) Where the owner has revised the base lending rate, he shall serve a notice to hirer specifying the following:

- (a) the revised base lending rate;
- (b) the revised rate of terms charges;
- (c) the revised total amount of terms charges; and
- (d) the revised amount of instalments or the revised number of instalments, as the case may be.

**Right of hirer where the base lending rate is revised**

**6c.** Where the owner has revised the base lending rate, the hirer may opt whether—

- (a) to retain the existing number of instalments and vary the amount of instalments; or
- (b) to retain the existing amount of instalments and vary the number of instalments.

PART III

PROTECTION OF HIRERS AND GUARANTORS

*Warranties and Conditions*

**Conditions and warranties to be implied in every hire-purchase agreement**

**7.** (1) In every hire-purchase agreement there shall be—

- (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
- (b) an implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass;

- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality, but such a condition shall not be implied—

- (a) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; or
- (b) if the goods are second-hand goods and the agreement contains a statement to the effect that—
  - (i) the goods are second-hand; and
  - (ii) all conditions and warranties as to quality are expressly negated, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose, but such a condition shall not be implied if the goods are second hand goods and the agreement contains a statement to the effect—

- (a) that the goods are second-hand; and
- (b) that all conditions and warranties of fitness and suitability are expressly negated, and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

(4) Nothing in this section shall prejudice the operation of any other written law or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

### **Liability of the owner and person acting on his behalf for misrepresentation**

**8.** (1) Every representation, warranty or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or the dealer or any person acting on behalf of the owner

or the dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer—

- (a) as against the owner—the same right to rescind the agreement as the hirer would have had if the representation, warranty or statement had been by an agent of the owner; and
- (b) as against the person who made the representation, warranty or statement, and any person on whose behalf the person who made the representation, warranty or statement was acting in making it—the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty or statement or the person on whose behalf the person who made the representation, warranty or statement was acting (as the case may be) as a result of the negotiations.

(2) Every covenant, condition or term in any hire-purchase agreement or other document purporting to exclude, limit or modify the operation of subsection (1) or to preclude any right of action or any defence based on or arising out of any such representation, warranty or statement shall be void.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner shall be entitled to be indemnified by the person who made the representation, warranty or statement, and by any person on whose behalf the representation, warranty or statement was made against any damage suffered by the owner as a result of any such representation, warranty or statement.

## PART IV

### HIRERS

#### *Statutory rights of hirers*

#### **Duty of owners and sellers to supply documents and information**

**9.** (1) At any time before the final payment has been made under a hire-purchase agreement the owner shall, within fourteen days

after he has received a request in writing from the hirer, supply to the hirer a statement signed by the said person or his agent showing—

- (a) the amount paid to the owner by or on behalf of the hirer;
- (b) the amount which has become due under the agreement but remains unpaid;
- (c) the amount which is to become payable under the agreement; and
- (d) the amount derived from interest on overdue instalments:

Provided that an owner need not comply with such a request if he has sent the hirer a statement under this section within a period of three months immediately preceding the receipt of the request.

(2) In the event of a failure without reasonable cause to comply with subsection (1) then, while the default continues—

- (a) the owner shall not be entitled to enforce—
  - (i) the agreement against the hirer;
  - (ii) any right to recover the goods from the hirer;
  - (iii) any contract of guarantee relating to the agreement;
- (b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall not be enforceable against the hirer or the guarantor by any holder thereof.

(3) If the default aforesaid continues for a period of one month, the owner shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

### **Appropriation of payments made in hire-purchase agreements**

**10.** A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on

making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the payment shall by virtue of this section be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

### **Power of court to allow goods to be removed**

**11.** Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, a court of a Magistrate may, on the application of the hirer, make an order approving the removal of the goods to some other place, which place shall, for the purposes of the agreement, be substituted for the place mentioned in the agreement.

### **Assignments of rights under hire-purchase agreement**

**12.** (1) The right, title and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner, or if his consent is unreasonably withheld, without his consent.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in subsection (1) and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his consent to an assignment by the hirer or his right, title and interest under the agreement, the hirer may apply to the High Court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4) As a condition of granting consent to an assignment of the right, title and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee—

- (a) to execute and deliver to the owner an assignment in a form approved by the owner whereby without prejudicing or affecting the continuing personal liability of the hirer in those respects the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and
- (b) to pay the reasonable costs (if any) incurred by the owner in stamping or registering the assignment agreement or counterparts.

(5) The refusal on the part of the owner to give consent to an assignment as is mentioned in subsection (1) on the ground that he requires other or additional guarantors to guarantee the assignee's obligation shall be deemed unreasonable—

- (a) where the same guarantors who have guaranteed the hirer's obligation under the hire-purchase agreement have agreed to guarantee the assignee's obligation under that agreement; or
- (b) where the assignee has furnished the same number of guarantors as was furnished by the hirer to guarantee his obligation under the hire-purchase agreement as guarantors for his obligation under the agreement.

### **Operation of law**

**13.** The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same right under the agreement as the company but nothing in this section shall relieve any personal representative or liquidator from compliance with the provisions of the agreement.

**Early completion of agreement**

**14.** (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due under the agreement.

(2) For the purposes of subsection (1)—

(a) where in the hire-purchase agreement the terms charges are at a fixed rate, the net balance due is the balance originally payable under the agreement less—

(i) any amounts (other than the deposit) paid or provided by or on behalf of the hirer under the agreement;

(ii) the statutory rebate for terms charges; and

(iii) if the hirer requires any contract of insurance to be cancelled, the statutory rebate for insurance; or

(b) where in the hire-purchase agreement the terms charges are at a variable rate, the net balance due is the outstanding amount financed and terms charges accrued and calculated up to the next due date of payment less, if the hirer requires any contract of insurance to be cancelled, the statutory rebate for insurance.

(c) if the hirer requires any contract of insurance to be cancelled, the statutory rebate for insurance.

(3) The rights conferred on the hirer by this section may be exercised by him—

(a) at any time during the continuance of the agreement;  
or

(b) where the owner has taken possession of the goods, upon payment to the owner (within twenty-one days after the owner has served a notice in the form set out in the Fifth Schedule) in addition to the net balance due together with the reasonable costs including costs (if any) of storage, repair or maintenance of the goods incurred by the owner incidental to his taking possession of the goods; or

- (c) where the hirer has returned the goods to the owner within twenty-one days after the service on him of the notice in the form set out in the Fourth Schedule, upon payment to the owner (within twenty-one days after the owner has served a notice in the form set out in the Fifth Schedule) the net balance due under the Act.

### **Power of hirer to determine hiring**

**15.** (1) The hirer of any goods comprised in a hire-purchase agreement may terminate the agreement by returning the goods to the owner during ordinary business hours at the place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement.

(2) Where the nature of the goods comprised in a hire-purchase agreement or the facilities available at the place or places of business of the owner or the place specified in the agreement is or are such that it would be impracticable to return the goods to such a place, the hirer may terminate the agreement by returning the goods to any place agreed to by the parties to the agreement.

(3) Where the parties fail to agree, the hirer who proposes to return goods to the owner under this section may, subject to subsection (4), apply to a court of a Magistrate for an order fixing the place to which the goods may be returned, and the court—

- (a) shall fix the place that is in its opinion reasonable having regard to all the circumstances surrounding the transaction;
- (b) may order that, subject to the goods being returned to the owner, the agreement shall be determined on such date as is specified in the order, not being the date before the hirer required the owner to nominate a reasonable place for the return of the goods.

(4) Notice of an application under subsection (3) shall be given to the owner by the hirer.

(5) Where a hire-purchase agreement is determined pursuant to this section—

- (a) the hirer may require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price agreeable to the owner;

- (b) where the value of the goods at the time when it is returned to the owner is more than the balance outstanding under the hire-purchase agreement, the hirer is entitled to the difference which is recoverable as a debt due;
  - (c) where the value of the goods at the time when it is returned to the owner is less than the balance outstanding under the hire-purchase agreement, the owner is entitled to the difference which is recoverable as a debt due.
- (6) For the purposes of this section—
  - (a) “balance outstanding under the hire-purchase agreement” means—
    - (i) where in the hire-purchase agreement the terms charges are at a fixed rate, the total sum payable by the hirer to complete the purchase of goods to which the agreement relates and the amount derived from interest on overdue instalments which has yet to be paid less—
      - (a) the amount paid by or on behalf of the hirer excluding deposit;
      - (b) statutory rebate for terms charges; and
      - (c) statutory rebate for insurance, if any; or
    - (ii) where in the hire-purchase agreement the terms charges are at a variable rate, the outstanding amount financed and terms charges accrued and calculated up to the next due date of payment less statutory rebate for insurance, if any;
  - (b) “value of the goods at the time when it is returned to the owner” means—
    - (i) the best price that could reasonably be obtained by the owner; or
    - (ii) if the hirer had introduced a person who had bought the goods for cash, the amount paid by that person.

*Repossession***Notices to be given to hirer when goods repossessed**

**16.** (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless the payment of instalments amounts to not more than seventy-five percent of the total cash price of the goods comprised in the hire-purchase agreement and there had been two successive defaults of payment by the hirer and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice.

(1A) Notwithstanding subsection (1), if the payment of instalments made amounts to more than seventy-five percent of the total cash price of the goods comprised in a hire-purchase agreement and there had been two successive defaults of payment by the hirer, an owner shall not exercise any power of taking possession of the goods comprised in the hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless he has obtained an order of the court to that effect.

(1B) Where an owner has obtained an order of the court under subsection (1A) and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice, the owner may exercise the power of taking possession of goods referred to in subsection (1A).

(1C) Where a hirer is deceased, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there has been four successive defaults of payments.

(2) An owner need not comply with subsection (1) if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

(3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form set out in the Fifth Schedule.

(4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods or, if the hirer is not present at that time, send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.

(5) The document acknowledging receipt of the goods, required under subsection (4) shall set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.

(6) If the notice required by subsection (3) is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine; but if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.

(7) Before and when exercising the power of taking possession the owner or his servant or agent shall, in addition to the provisions of this Act, comply with any regulations relating to the manner of taking possession as may be prescribed.

**Hirer who returns goods not liable to pay cost of repossession, etc.**

**16A.** A hirer who returns goods comprised in a hire-purchase agreement within twenty-one days after the service on him of the notice in the form set out in the Fourth Schedule shall not be liable to pay—

- (a) the cost of repossession;
- (b) the cost incidental to taking possession; and
- (c) the cost of storage.

**Owner to retain possession of goods repossessed for twenty-one days**

**17.** (1) Where an owner has taken possession of any goods under section 16 he shall not, without the written consent of the hirer, sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection 16(3) or, if notice under paragraph 18(1)(a) has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

(2) An owner who sells or disposes of any goods or parts with possession of any goods in contravention of subsection (1) shall be guilty of an offence under this Act.

**Permits for repossession**

**17A.** (1) No person shall undertake repossession of goods comprised in a hire-purchase agreement without a written permit issued by the Controller.

(2) Any person who contravenes subsection (1) shall be guilty of an offence under this Act.

**Offence to appoint non-permit holder**

**17B.** (1) An owner shall appoint as his agent to undertake the repossession of goods comprised in a hire-purchase agreement a person who is a permit holder under subsection 17A(1).

(2) An owner who contravenes subsection (1) shall be guilty of an offence under this Act.

**Hirer's rights and immunities when goods repossessed**

**18.** (1) Where the owner takes possession of any goods under section 16—

(a) the hirer may within twenty-one days after the service on him of the notice referred to in subsection 16(3) by

giving to the owner a notice in writing signed by the hirer or his agent—

- (i) require the owner to re-deliver to or to the order of the hirer (subject to the compliance by the hirer with the provisions of section 19) the goods that have been repossessed; or
- (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first mentioned notice;

(b) the hirer may recover from the owner—

- (i) where in the hire-purchase agreement the terms charges are at a fixed rate, if the value of the goods at the time of the owner so taking possession of the goods—

- (A) is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement exceeds the net amount payable, the difference between that total and the net amount payable; or

- (B) is equal to or greater than the net amount payable, the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable; or

- (ii) where in the hire-purchase agreement the terms charges are at a variable rate and the value of the goods at the time of the owner so taking possession of the goods is equal to or greater than the balance outstanding under the hire-purchase agreement, the difference between the value of the goods and the balance outstanding under the hire-purchase agreement.

(2) Where the owner takes possession of any goods comprised in a hire-purchase agreement, the owner is not entitled to recover—

(a) where in the hire-purchase agreement the terms charges are at a fixed rate, any sum (whether under a judgment or order or otherwise) exceeding the net amount payable in respect of the goods obtained by adding—

(i) the value of the goods at the time of the owner so taking possession of the goods; and

(ii) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement; or

(b) where in the hire-purchase agreement the terms charges are at a variable rate, any sum (whether under a judgment or order or otherwise) which exceeds the balance outstanding under the hire-purchase agreement.

(3) For the purposes of this section—

(a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods;

(aa) the balance outstanding under the hire-purchase agreement is the outstanding amount financed and terms charges accrued and calculated up to the time of the owner so taking possession of the goods less the statutory rebate or insurance; and

(b) the value of any goods at the time of the owner taking possession thereof is—

(i) the best price that could be reasonably obtained by the owner; or

(ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person,

less—

(iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;

- (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
- (v) (whether or not the goods have subsequently been sold or disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.

(4) Where an owner takes possession of any goods comprised in a hire-purchase agreement and intends to sell them—

- (a) by public auction, he shall be required to serve or cause to be served on the hirer a copy of the notice of such public auction not less than fourteen days from the date the said auction is to be held; or
- (b) otherwise than by public auction, he shall be required to give the hirer an option to purchase the goods at the price at which he intended to sell them if that price is less than the owner's estimate of the value of the goods repossessed as stated in the notice referred to in subsection 16(3),

and if he fails to comply with such requirement he shall be guilty of an offence under this Act.

(5) No amount is recoverable by the hirer under this section except where the owner has failed to serve on the hirer notice as required by subsection 16(3) unless—

- (a) the hirer, within twenty-one days after the owner has served a notice as required by subsection 16(3), gives to the owner notice in writing—
  - (i) setting out the amount claimed under the provisions of this section and the amount that is claimed by the hirer to be the value of the goods at the time of the owner taking possession thereof; and
  - (ii) signed by the hirer or his advocate and solicitor or agent; and
- (b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not later than three months after the giving by the hirer to the owner of the notice referred to in paragraph (a).

(6) If, before the proceedings referred to in subsection (5) are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any amount in satisfaction of the claim by the hirer under this section, the owner, in the proceedings, is entitled to pay into court the amount so offered and, upon so doing, is entitled to the same rights as he would have had if that amount had been tendered to the hirer before the proceedings were commenced:

Provided that no such right shall be available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

### **Power of hirer to regain possession of goods in certain circumstances**

**19.** (1) If, within twenty-one days after giving notice to the owner pursuant to paragraph 18(1)(a), the hirer—

- (a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date);
- (b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter, or thing necessary to remedy the breach; and
- (c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to the hirer,

the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

(2) Where goods are returned to the hirer pursuant to subsection (1) and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless—

- (a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and
- (b) the hirer fails within twenty-one days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

### **Power of court to vary existing judgments or orders when goods are repossessed**

**20.** In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as is necessary to give effect to section 18.

## PART V

### GUARANTORS

#### **Owner may require guarantors**

**20A.** An owner may require a hirer to furnish a guarantor or such number of guarantors acceptable to the owner to guarantee the performance of the hirer's obligations under the hire-purchase agreement.

#### **Provisions as to guarantors**

**21.** (1) Save as provided in this Act a guarantor is not, by reason of the operation of this Act, discharged from liability under his guarantee.

(2) The liability of a guarantor continues notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and

whether or not the goods have been re-delivered to the hirer pursuant to this Act); but nothing in this subsection operates to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but, nothing in this Act affects any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee has the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor:

Provided that no moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

### **Guarantor not to be bound in certain cases**

**22.** Where a guarantor of the performance of the obligations of the hirer under a hire-purchase agreement enters into an agreement binding the guarantor—

- (a) to pay to the owner an aggregate sum which is larger than the balance originally payable under the agreement;  
or
- (b) to perform an obligation in respect of goods other than the goods comprised in the hire-purchase agreement,

the agreement so entered shall be void unless the agreement is executed by the guarantor in the presence of a Magistrate, a Commissioner for Oaths or a Notary Public.

**Rights of guarantor against owner**

**23.** (1) The guarantor under this Part may at any time secure his discharge by paying the amount due to the owner from the hirer.

(2) Upon such payment being made he is entitled to—

(a) sue the hirer in the name of the owner for any breach of the hirer's obligations under the hire-purchase agreement subject to providing the owner with a suitable indemnity for costs or sue in his own name if he takes a legal assignment of the hire-purchase debt;

(b) insist upon the transfer to himself of all securities taken by the owner from the hirer to secure performance of the hirer's obligations.

(3) The guarantor is entitled in the event of any claim being made against him by the owner on the guarantee to avail himself of any set-off or counter-claim which the hirer may possess against the owner.

**Rights of guarantor against hirer**

**24.** (1) The guarantor is entitled to be indemnified by the hirer against any claim made by the owner on the guarantee.

(2) The guarantor is entitled to compel the hirer to pay the instalments in respect of the hire-purchase agreement as and when they fall due; and for this purpose he may apply to a court of a Magistrate for an order to that effect.

**Guarantor not to seize**

**25.** Nothing in this Part shall entitle the guarantor to exercise a licence to seize conferred on the owner by the hire-purchase agreement except where the agreement expressly provides that such licence shall be assignable.

## PART VI

## INSURANCE

**Insurance of goods comprised in hire-purchase agreements**

**26.** (1) An owner shall cause to be insured in the name of the hirer—

- (a) motor vehicles comprised in a hire-purchase agreement, for the first year only; and
- (b) all other goods comprised in a hire-purchase agreement, for the duration of time that the goods remain under hire-purchase,

against any risks that he thinks fit.

(2) Where the goods comprised in a hire-purchase agreement is a motor vehicle, it shall be the duty of the hirer to cause the said vehicle to be insured in respect of the second and all subsequent years that the motor vehicle remains under hire-purchase.

(3) An owner shall not require a hirer to insure any risks with any particular registered insurer.

(4) An owner who fails to comply with subsection (1) and a hirer who fails to comply with subsection (2) shall be guilty of an offence under this Act.

(5) A hirer shall, not less than fourteen days before the date of expiry of a policy of insurance in respect of a motor vehicle, inform the owner that he has renewed the said policy or that he has caused a fresh policy of insurance to be issued.

(6) Where the hirer has failed to renew the policy of insurance or to cause a fresh policy to be issued, the owner shall be at liberty to cause the motor vehicle to be insured and any costs thereby incurred shall be borne by the hirer.

(7) All amounts payable in respect of insurance, excluding such amounts payable in respect of the insurance of motor vehicles for the second and subsequent years, shall form part of the hire-purchase price.

(8) Where in respect of the insurance of goods comprised in a hire-purchase agreement, the insurer allows any commission or rebate including a no-claim rebate or any other rebate of a similar nature (as distinct from legitimate agency commission) to an owner who is also a *bona fide* agent of an insurer and who arranges the insurance on behalf of the hirer, the hirer under the hire-purchase agreement is entitled to the benefit of the commission and the rebate and any person who knowingly pays or allows any such commission or rebate to an owner and any owner who receives such commission or rebate shall be guilty of an offence under this Act.

### **Powers of court in relation to insurance contracts associated with hire-purchase agreements**

**27.** (1) In any proceedings taken in any court in respect of any difference or dispute arising out of a contract of insurance if it appears to the court that a failure by the insured or the hirer under the hire-purchase agreement concerned to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may, unless an order excusing the failure has already been made under subsection (2), order that the failure be excused.

(2) Where a difference or dispute has arisen out of a contract of insurance, the insured or the hirer under the hire-purchase agreement concerned or any guarantor in respect of that agreement may, unless an order excusing the failure concerned has already been made under subsection (1), apply to the court for an order that the failure to observe or perform a term or condition of the contract of insurance be excused; and if it appears to the court that the failure may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.

(3) Where an order of the nature referred to in subsections (1) and (2) has been made the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

**Contents of contracts of insurance**

**28.** (1) Every copy of a policy of insurance (not being a policy of third party insurance), and every statement, served upon a hirer pursuant to section 4 shall—

- (a) identify the goods or the part of the goods to be insured; and
- (b) contain a statement of the amount and period for which the goods are insured or are to be insured; and
- (c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

(2) Subject to subsection (3) any provision in any agreement, policy of insurance or other document—

- (a) requiring differences or disputes arising out of a contract of insurance to be referred to arbitration;
- (b) providing that no action or suit shall be maintainable upon such a contract or against the insurer in respect of any claim under, or difference or dispute arising out of, such a contract unless the claim, difference, or dispute has been referred to arbitration or an award pursuant to arbitration proceedings has been first obtained;
- (c) providing that arbitration or an award pursuant to arbitration proceedings is a condition precedent to any right of action or suit upon such a contract; or
- (d) otherwise imposing by reference to arbitration or to an award made in arbitration proceedings any limitation on the right of person to bring or maintain any action or suit upon such a contract,

shall not bind the hirer.

(3) Nothing in subsection (2) shall prevent the parties to a contract of insurance from making an agreement, after a difference or dispute has arisen out of the contract of insurance, to submit the difference or dispute to arbitration.

**Application of Part VI**

**29.** The provisions of this Part shall have effect notwithstanding anything to the contrary contained in any other written law.

PART VII

GENERAL

**Limitation on terms charges**

**30.** (1) The terms charges in relation to a hire-purchase agreement shall not, when calculated as a rate per centum per annum in accordance with the formula set out in the Sixth Schedule, exceed a rate per annum as may be prescribed by any regulations made under this Act in respect of any goods or class of goods.

(2) Where a hire-purchase agreement is entered into in contravention of this section, the hirer may, by notice in writing to the owner signed by the hirer or hirer's agent, elect either to treat the agreements as void or to have his liability reduced by the amount included in the agreement for terms charges; and—

- (a) where the hirer elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement shall be recoverable by action as a debt due to him by the owner;
- (b) where the hirer elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by action by the hirer as a debt due to him by the owner.

**Booking fee**

**30A.** (1) No owner, dealer, agent or person acting on behalf of the owner shall collect or accept a booking fee from an intending hirer before the receipt of the duly completed form set out in Part II of the Second Schedule by the hirer.

(2) The booking fee referred to in subsection (1) shall not exceed one percent of the cash price of the goods comprised in a hire-purchase agreement.

(3) Notwithstanding anything under this Act, the booking fee shall form part of the deposit under section 31.

(4) An owner, dealer, agent or person acting on behalf of the owner shall refund ninety percent of the booking fee to the intending hirer upon the withdrawal of the booking of the goods comprised in a hire-purchase agreement.

(5) Any person who contravenes this section shall be guilty of an offence under this Act.

**Minimum deposits**

**31.** (1) Where the minimum amount of the deposit in respect of any goods or class of goods is not prescribed, an owner who enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value not less than one-tenth of the cash price of the goods comprised in the agreement, shall be guilty of an offence under this Act.

(1A) An owner shall collect the deposit upon the signing of the hire-purchase agreement.

(1B) If any owner, dealer, agent or person acting on behalf of the owner fails to deliver the goods intended for the hire-purchase agreement to the intending hirer, the owner, dealer, agent or person acting on behalf of the owner shall refund the full amount of the deposit to the intending hirer.

(2) In this section and in section 32 “hire-purchase agreement” does not include any agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of the rights and liabilities under an existing hire-purchase agreement from the hirer to another person.

(3) Any person who contravenes subsections (1A) and (1B) shall be guilty of an offence under this Act.

**Certain payments, etc., not to be treated as deposits for the purposes of this Part**

**32.** (1) No deposit—

- (a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
  - (i) from or through the owner (if the owner is not a banker);
  - (ii) from or through an agent or servant of the owner; or
  - (iii) from or through any person whose business or part of whose business it is, by agreement with the owner or any person acting on behalf of the owner, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;
- (b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;
- (c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
- (d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section 31 have been complied with.

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer or an agent or employee of the owner.

(3) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a transaction contravening the provisions of this section shall be guilty of an offence under this Act.

### **Power of court to reopen certain hire-purchase transactions**

**33.** (1) In any proceedings under this Act or arising out of a hire-purchase agreement, or instituted pursuant to subsection (4), where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that it will be just to give relief the court may reopen the transaction.

(2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation—

- (a) reopen any account already taken between the parties;
- (b) relieve the hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;
- (c) set aside either wholly or in part or revise or alter any agreement made or security given in connection with the transaction;
- (d) give judgment for any party for such amount as having regard to the relief (if any) that the court thinks fit to grant, is justly due to that party under the agreement; and
- (e) if it thinks fit give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable the court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

(4) Subject to subsection (5), proceedings may be instituted in a court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) A hirer or guarantor under a hire-purchase agreement is not entitled to institute proceedings under this section—

- (a) in a case where the owner has taken possession of the goods comprised in the agreement after the expiration of a period of four months after the date on which the owner serves on the hirer the notice required by subsection 16(3) to be served on him; or
- (b) in any other case—after the expiration of a period of four months from the time when the transaction is closed.

(6) In any proceedings under this section the court has and may exercise all or any of the powers conferred by subsections (1), (2) and (3) notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

### **Avoidance of certain provisions**

**34.** Any provision in any hire-purchase agreement whereby—

- (a) any right conferred on the hirer by this Act to determine a hire-purchase agreement is excluded or restricted;
- (b) the hirer is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Act;

- (c) the hirer is required to pay interest on any overdue instalments at a rate exceeding eight per centum per annum under hire-purchase agreement which provides for terms charges at a fixed rate or, two per centum above the prevailing rate of terms charges, under a hire-purchase agreement which provides for terms charges at a variable rate, simple interest calculated on a daily basis or such other rate of interest as may be prescribed;
- (d) the owner is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement;
- (e) the owner or any person acting on his behalf is authorized to enter upon any premises for the purpose of taking possession of goods otherwise than in accordance with the provisions of this Act comprised in the hire-purchase agreement or is relieved from liability for any such entry;
- (f) the operation of the hire-purchase agreement is determined or modified or any person is authorized to re-possess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named); or
- (g) except as expressly provided by this Act, the operation of any provision of this Act is excluded, modified, or restricted,

shall be void and of no effect.

### **Provisions relating to securities collateral to hire-purchase agreements**

#### **35. Where—**

- (a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and
- (b) the payment in due course of the bill of exchange or promissory note would, by virtue of the operation of any provision of this Act or otherwise, result in payment of

an amount in excess of the liability of the hirer under the agreement,

the owner is liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

**False statement by dealers, *etc.*, in proposals**

**36.** Where—

- (a) a dealer, an agent or a person on behalf of an owner prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and
- (b) the agreement or offer contains to the knowledge of the dealer, agent or person acting on behalf of the owner, as the case may be, a false statement or representation that is false in any material particular,

the dealer, agent or person acting on behalf of the owner shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

**Prohibition against collection of payment other than those in the Second Schedule**

**36A.** Any owner, dealer, agent or person acting on behalf of the owner who collects any payment in respect of a hire-purchase agreement other than a payment listed in the Second Schedule or a payment permitted under this Act shall be guilty of an offence under this Act.

**Prohibition against collection of payment by persons other than owners, dealers, agents, *etc.***

**36B.** Any person not being an owner, dealer, agent or person acting on behalf of the owner who collects any payment from a hirer in respect of a hire-purchase agreement shall be guilty of an offence under this Act.

**Issue of receipt in respect of payments**

**36c.** (1) An owner, dealer, agent or person acting on behalf of the owner who collects any payment in respect of a hire-purchase agreement shall issue a receipt to the hirer in respect of every such payment collected.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act.

**Owner to inform hirer where dealer, etc., has ceased to be authorized to collect payment**

**36d.** Where it is within the knowledge of the owner that any dealer, agent or person acting on behalf of the owner to collect any payment in respect of a hire-purchase agreement has ceased to be a dealer or agent or person authorized to act on his behalf, it shall be the duty of the owner to inform every hirer from whom such dealer, agent or person ordinarily collects payment that the dealer, agent or person has ceased to be authorized to so act and that no further payments should be made to such dealer, agent or person.

**Hirer may be required to state where goods are**

**37.** (1) The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are, or if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them, and any hirer who does not within fourteen days after the receipt of such a notice give to the owner such a statement or who gives a statement containing any information that is to the knowledge of the hirer false shall be guilty of an offence under this Act.

(2) Where—

(a) a hirer removes the goods comprised in a hire-purchase agreement from the address specified; or

- (b) goods comprised in a hire-purchase agreement are lost or are removed from or are taken out of the hirer's possession,

the hirer shall inform the owner in writing or state in the presence of the owner—

- (i) the new address where the goods are kept; or
- (ii) the date and circumstances in which the goods were lost; or
- (iii) the date and circumstances in which the goods were removed or taken out of his possession,

and any hirer who does not within fourteen days of the removal or loss comply with the provisions of this subsection shall be guilty of an offence under this Act.

### **Fraudulent sale or disposal of goods by hirer**

**38.** Every person who, by the disposal or sale of any goods comprised in a hire-purchase agreement, or by the removal of the goods, or by any other means, defrauds or attempts to defraud the owner shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Certain alterations, etc., of hire-purchase agreement to be of no effect**

**39.** Any alteration of, or matter added to, a hire-purchase agreement or any written document that contains the terms and conditions of the agreement after the document was signed, if the alteration is an alteration of any of the matters set out in the written statement or statements required to be served on the hirer pursuant to paragraphs 4(1)(a) and (b) before the hire-purchase agreement was entered into, shall have no force or effect unless the hirer or his agent has consented to the alteration or the additional matter by signing or initialing the agreement or the written document in the margin thereof opposite the alteration

or additional matter or, the hirer or his agent has consented to the alteration or the additional matter by signing an agreement supplemental to the hire-purchase agreement.

### **Second-hand goods**

**40.** Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods then unless—

- (a) the goods are described in the agreement as second-hand goods; or
- (b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that—
  - (i) the hirer was aware at the time when he or his agent signed the agreement that goods comprised or to be comprised therein were second-hand goods; or
  - (ii) the owner was not aware at the time when the agreement was entered into that the goods comprised therein were second-hand goods,

the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges. The amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off may be recovered by the hirer from the owner as a civil debt.

### **Power of court to extend time**

**41.** Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to a court of a Magistrate (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement), be extended by such court for such further period, and upon such conditions, as the court thinks fit.

**Power of court to order delivery of goods unlawfully detained**

**42.** (1) Upon complaint made to a court of a Magistrate by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement or by any person acting on behalf of an owner that the hirer or any person in possession of the goods has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorized in that behalf, the Magistrate may summon the person complained of to appear before the court and if it appears to the court hearing the case that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time, and at a place, to be specified in the order.

(2) Any person who neglects or refuses to comply with any order made under this section shall be guilty of an offence under this Act.

**Service of notices**

**43.** Any notice or document required or authorized to be served on or given or sent to an owner or hirer under this Act may be served or given or sent—

(a) by delivering it to him personally; or

(b) *(Deleted by Act A813)*;

(c) by posting it by registered post addressed to him at his last known place of abode or business.

**Substituted service**

**43A.** (1) Where it appears that it is impracticable for any reason to serve a notice or document required or authorized to be served on or given or sent to an owner or hirer in accordance with section 43, a court of a Magistrate may, on application by an owner or hirer, as the case may be, make an order for substituted service of the notice or document.

(2) An application for an order for substituted service must be made by notice supported by an affidavit stating the facts on which the application is founded.

(3) Substituted service of the notice or document is effected by taking such steps as the court may direct to bring the notice or document to the attention of the person to be served.

### **Proof of service**

**44.** The affidavit or oral evidence of an owner or his servant or agent, or a hirer, as to the delivery, posting or service of any notice or document required or authorized to be served, given or sent under this Act is admissible as *prima facie* proof of the service, giving or sending of the notice or document.

### **Size, type, etc., required in certain documents**

**45.** (1) Any prescribed document or part thereof—

- (a) not being the signature or initials of any person, that is in handwriting that is not clear and legible;
- (b) that is printed in type of a size smaller than the type known as ten-point Times; or
- (c) that is not printed in black,

shall, for the purposes of this Act, be deemed not to be in writing.

(2) In this section “prescribed document” means—

- (a) any hire-purchase agreement;
- (b) any statement under subsection 4(1);
- (c) any copy of an agreement, notice or statement required by section 5 to be served on a hirer;
- (d) any statement required by subsection 9(1) to be sent to a hirer; and
- (e) any notice under subsection 16(1) or (3).

(3) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Act, deemed not to be in writing, then, except as is otherwise in this Act expressly provided, the validity or effect of the prescribed document is not affected.

Nothing in this subsection affects the liability of any person to be convicted of an offence under this Act.

### **Penalty**

**46.** (1) Any person who is guilty of an offence under this Act or any regulations made thereunder for which no penalty is expressly provided shall, on conviction, be liable—

(a) if such person is a body corporate, to a fine not exceeding one hundred thousand ringgit, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit;

(b) if such person is not a body corporate, to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Where a person, being a director, manager or an officer concerned in the management of the body corporate or was purporting to act in such capacity, is guilty, by virtue of section 47, of an offence under this Act or any regulations made thereunder for which no penalty is expressly provided, he shall be liable to the penalty provided for under paragraph (1)(b).

### **Liability of responsible officers of company**

**47.** Where any offence under this Act has been committed by anybody corporate (whether or not the body corporate has been prosecuted) any person who at the time of the commission of the offence was a director, manager or an officer concerned in the management of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the

commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances of the case.

### **Principal criminally liable for acts of servant or agent**

**48.** Where the agent or servant of a person commits an offence, or does anything or omits to do anything (which if done or omitted to be done by that person would constitute an offence under this Act) that person shall notwithstanding that he has no knowledge of the offence be deemed guilty of the offence and be liable to punishment for the offence unless he proves that—

- (a) the act or omission complained of was not within the ordinary scope of the employment of the agent or servant; or
- (b) the act or omission complained of was done or omitted to be done without his consent or connivance and that he exercised all such diligence to prevent the commission as he ought to have exercised having regard to all the circumstances of the case.

## PART VIII

### POWERS OF ENFORCEMENT

#### **Declaration of office**

**49.** Every officer appointed under this Act when acting against any person under this Act shall on demand declare his office and produce to the person against whom he is acting such authority card as the Controller may direct to be carried by such officer.

#### **Power to enter premises and inspect and seize goods and documents**

**50.** (1) Any officer appointed under this Act may, at all reasonable hours, exercise the following powers, that is to say—

- (a) if he has reasonable cause to suspect that an offence under this Act has been committed, he may for the purpose of ascertaining whether it has been committed, enter any

premises other than premises used only as a dwelling and require any person carrying on a trade or business or employed in connection with a trade or business to supply him any information or to produce any goods, document or computerized data relating to the trade or business and he may take copies of, or copies of any entry in, any such document or computerized data;

- (b) he may seize and detain any goods, document or computerized data which he has reason to believe may be required as evidence in proceedings for an offence under this Act.

(2) Any officer appointed under this Act seizing any goods, document or computerized data in the exercise of his powers under this section shall, as soon as possible, supply a list of the goods, documents or computerized data seized to the person from whom they are seized.

(3) If a Magistrate, on sworn information in writing—

- (a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, document or computerized data which any officer appointed under this Act has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or

(ii) that an application for admission or the giving of such a notice would defeat the object of the entry or that the premises are unoccupied or that the

occupier is temporarily absent and it might defeat the object of the entry to await his return,

the Magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize any officer appointed under this Act to enter the premises, if need be by force.

(4) Any officer appointed under this Act entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of the powers under subsection (1) or a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

### **Access to computerized data**

**50A.** (1) An Assistant Controller conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, “access”—

- (a) includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of such computerized data; and
- (b) has the same meaning assigned to it by subsections 2(2) and (5) of the Computer Crimes Act 1997 [Act 563].

### **List of things seized**

**50B.** (1) Where any goods, document or computerized data is seized under this Part, the Assistant Controller shall, as soon as practicable, prepare a list of the things seized and of the places in which they are respectively found and deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises are unoccupied, the Assistant Controller shall whenever possible post a list of the things seized conspicuously on the premises.

**Obstruction of officers**

**51.** (1) Any person who—

- (a) wilfully obstructs any officer appointed under this Act acting in pursuance of this Act;
- (b) wilfully fails to comply with any requirement properly made to him by such an officer under section 50; or
- (c) without reasonable cause fails to give such an officer so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Act,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(2) If any person, in giving any such information as is mentioned in the preceding subsection, makes any statement which he knows or has reason to believe to be false, he shall be guilty of an offence and shall, on conviction, be liable to the penalty mentioned in that subsection.

(3) (*Deleted by Act A1384*).

**Warrant admissible notwithstanding defects, etc.**

**51A.** A warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any goods or documents seized under such warrant shall be admissible in evidence in any proceedings under this Act.

**Powers of investigation**

**51b.** (1) An Assistant Controller shall have the power to investigate the commission of any offence under this Act or any regulations made thereunder.

(2) An Assistant Controller investigating the commission of an offence under this Act or any regulations made thereunder may exercise all or any of the powers in relation to police investigation in seizable cases as provided for under the Criminal Procedure Code [*Act 593*].

**Power of arrest**

**51c.** (1) An Assistant Controller may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Act if the person refuses to furnish his name and address or furnishes an address out of Malaysia or there are reasonable grounds for believing that he has furnished a false name or address or that he is likely to abscond.

(2) An Assistant Controller making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as provided under the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

**Power to require attendance of person acquainted with case**

**51d.** (1) An Assistant Controller making an investigation under this Act or any regulations made thereunder may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses to attend as so required, the Assistant Controller may report such refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order made under subsection (1).

**Examination of person acquainted with case**

**51E.** (1) An Assistant Controller making an investigation under this Act or any regulations made thereunder may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Assistant Controller, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The Assistant Controller examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be, after—

(a) it has been read to him in the language in which he made it; and

(b) he has been given an opportunity to make any correction he may wish.

**Supply of information**

**52.** (1) The Controller, Deputy Controller and any other officer specially authorized in writing by the Controller in that behalf may in writing require any owner or dealer to supply him any information he may request relating to any hire-purchase agreement or to the goods to which such agreement relates.

(2) Any person who without reasonable excuse fails to supply any information requested under subsection (1) or supplies any information which he knows or has reason to believe to be false commits an offence under this Act.

### **Admissibility of statement in evidence**

**53.** (1) Except as provided in this section, no statement made by any person to any Assistant Controller in the course of an investigation made under this Act or any regulations made thereunder shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to any Assistant Controller in the course of the investigation under this Act or any regulations made thereunder and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [*Act 56*].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to—

(a) the making; or

(b) the contents,

of any statement made by him to any Assistant Controller in the course of an investigation made under this Act or any regulations made thereunder, that statement may be used as evidence in the prosecution's case.

**Disclosure of information**

**54.** If any person discloses to any other person any information obtained by him in pursuance of this Act he shall be guilty of an offence unless the disclosure was made in or for the purpose of the performance of functions under this Act.

**Prosecution**

**55.** No prosecution for any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

**Forfeiture of goods, *etc.*, seized**

**55A.** (1) Any goods, document or computerized data seized in the exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any goods, document or computerized data seized in the exercise of any power conferred under this Act shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the goods, document or computerized data shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the goods, document or computerized data were the subject matter of or were used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(3) If there be no prosecution with regard to any goods, document or computerized data seized in the exercise of any power conferred under this Act, such goods, document or computerized data shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of service of a notice to the person from whom the goods, document or computerized data were seized indicating that there is no prosecution in respect of such goods, document or computerized data, unless a claim thereto is made before that date in the manner set out in subsections (4), (5) and (6).

(4) Any person asserting that he is the owner of the goods, document or computerized data referred to in subsection (3) and that it is not liable to forfeiture may, personally or by his agent authorized in writing, give written notice to the Assistant Controller in whose possession such goods, document or computerized data is held that he claims the goods, document or computerized data.

(5) On receipt of the notice under subsection (4), the Assistant Controller shall refer the notice to the Controller or Deputy Controller, who may, after such enquiries as may be necessary, direct that such property, document or computerized data be released or forfeited or refer the matter to a Magistrate for his decision.

(6) The Magistrate to whom the matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the goods, document or computerized data and the person from whom they were seized to appear before such Magistrate and upon their appearance or default to appear, due service of the summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such goods, document or computerized data were the subject matter or were used in the commission of such offence shall order the same to be forfeited and shall, in the absence of such proof, order their release.

(7) Any goods, document or computerized data forfeited or deemed to be forfeited shall be delivered to the Assistant Controller and shall be disposed of in accordance with the directions of the Controller.

#### **No costs or damages arising from seizure to be recoverable**

**55B.** No person shall, in any proceedings before any court in respect of any goods, document or computerized data seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

**Cost of holding property, etc., seized**

**55c.** Where any goods, document or computerized data seized in the exercise of any power under this Act is held in the custody of the Government pending the completion of any proceedings in respect of an offence under this Act or any regulations made thereunder, the cost of holding it in custody shall, in the event of any person being found guilty of an offence under this Act or any regulations made thereunder, be a debt due to the Government by such person and shall be recoverable accordingly.

**Compounding**

**56.** (1) The Controller or, in his absence, the Deputy Controller may, with the consent in writing of the Public Prosecutor, compound any offence which is prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Controller or, in his absence the Deputy Controller, of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in his written offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Controller or, in his absence the Deputy Controller, may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any goods, document or computerized data seized in connection with the offence may be released or forfeited by the Controller or, in his absence the Deputy Controller, subject to such terms and conditions as he deems fit to impose in accordance with the conditions of the compound.

**Protection of Controller, Deputy Controllers, Assistant Controllers, etc.**

**56A.** No action or prosecution shall be brought, instituted or maintained in any court against the Controller, Deputy Controllers, Assistant Controllers or any other officer duly appointed by the Minister for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act, and no suitor prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to have been done by him under the order, direction or instruction of the Controller, Deputy Controllers, Assistant Controllers or any other officer duly appointed by the Minister for any such purpose as aforesaid:

Provided that the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

**Protection of informers**

**56B.** (1) Except as provided in this section, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or to state any matter which might lead to his discovery.

(2) If any goods, document or computerized data which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(3) If in a trial for any offence under this Act or any regulations made thereunder, the court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

PART IX

REGULATIONS, *ETC.*

**Regulations**

**57.** (1) The Minister may make regulations for or in respect of every purpose which is deemed by him necessary for carrying out the provisions of this Act and for the prescribing of any matter which is authorized or required under this Act to be so prescribed.

(2) Without prejudice to the foregoing power the Minister may by regulations—

- (a) after consultation with the Minister charged with the responsibility for insurance prescribe—
  - (i) the rates of insurance in respect of any class or classes of goods;
  - (ii) the different rates for insurance in respect of different classes of goods;
  - (iii) the rates on a sliding scale; or
  - (iv) the rates according to or upon any specified principle or criterion;
- (b) prescribe all matters relating to the issuance of permits granted under this Act, including the procedure for application, fees, forms, conditions and duration of the permits;
- (c) regulate the manner by which an owner, his servant or agent shall exercise the power of taking possession;
- (d) require records to be maintained by owners and dealers and prescribe the particulars to be recorded;
- (e) require owners and dealers to supply at such times as may be specified information relating to hire-purchase transactions;
- (f) prescribe the offences under this Act which may be compounded, the amount of such compound and the procedure to be followed in compounding.

(3) The regulations made under this section may provide for—

- (a) any act or omission in contravention of the regulations to be an offence; and
- (b) the imposition of penalties of a fine not exceeding thirty thousand ringgit or imprisonment for a term not exceeding three years or to both.

### **Power to amend Schedules**

**57A.** (1) The Minister may by order published in the *Gazette* amend the Schedules to this Act.

(2) Hire-purchase agreements entered into prior to any amendment, or variation of, deletion from, or addition to, any Schedule to this Act shall not be affected by such amendment, variation, deletion or addition and the Act shall continue to apply or not to apply, as the case may be, to such hire-purchase agreements.

### **Operation of certain laws**

**58.** The Bills of Sale Ordinance 1950 [*F.M. No. 30 of 1950*] of the States of Malaya, the Bills of Sale Ordinance of Sabah [*Cap. 14*] and the Bills of Sale Ordinance of Sarawak [*Cap. 68*] and any subsequent or other legislation for the time being in force in the Federation relating to Bills of Sale shall not apply to any provision in any hire-purchase agreement whereby the rights of the owner thereunder are extended to any replacements or renewals by the hirer of any part or parts of or any accessories added or additions made by the hirer to any goods comprised in any such agreement.

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FIRST SCHEDULE

[Section 1]

LIST OF GOODS

- 1. All consumer goods;
- 2. Motor vehicles, namely—
  - (a) Invalid carriages;
  - (b) Motor Cycles;
  - (c) Motor Cars including taxi cabs and hire cars;
  - (d) Goods Vehicles (where the maximum permissible laden weight does not exceed 2540 kilograms);
  - (e) Buses, including stage buses.

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SECOND SCHEDULE

PART I

[Paragraph 4(1)(a) and Subparagraph 4(1)(b)(i)]

SUMMARY OF YOUR FINANCIAL OBLIGATIONS UNDER THE PROPOSED HIRE-PURCHASE AGREEMENT

This document contains a short description of the goods comprised in the hire-purchase agreement and a summary of your financial obligations under the proposed hire-purchase agreement.

- 1. *Particulars of goods*
  - (a) Short description of goods: .....
  - (b) If motor vehicle, state registration number: .....
  - (c) State whether new or second-hand: .....
  - (d) Address where goods will be kept: .....
- 2. *Particulars Relating To Your Financial Obligations*
  - (a) Cash price of goods\* RM .....
  - (b) Amount to be paid before entering into the hire-purchase agreement (hereinafter referred to as “deposit”) RM .....
  - (c) Cash price less deposit RM ..... RM .....

(d) Freight charges, if any	RM .....
(e) Vehicle registration fee, if any	RM .....
3. <i>Insurance:</i>	
(a) For motor vehicles, insurance in respect of the first year only:	RM .....
(b) For goods other than motor vehicles, in respect of the duration of the hire-purchase agreement	RM .....
4. <i>Terms charges:</i>	
(a) For fixed rate	
i Rate per annum.....%	
ii Total amount of terms charges	RM .....
(b) For variable rate	
i Rate per annum.....% + BLR, currently at .....	
ii Total amount of terms charges**	RM .....
Balance originally payable under the agreement**	RM .....
Annual Percentage Rate**	RM .....
Balance originally payable under the agreement, inclusive of deposit, referred to in the agreement as the "hire-purchase price"***	RM .....
Difference between cash price of goods and the total amount you will have to pay**	RM .....
5. <i>Particulars Relating to Payment</i>	
Duration of payment of instalments in—	
(a) number of months or years**	.....
(b) number of instalments**	.....
(c) amount of each instalment**	.....
This document is issued by or on behalf of .....	
at ..... on this .....	
..... day of ..... pursuant to Paragraph 4(1)(a)/Subparagraph 4(1)(b)(i)*** of the Hire-Purchase Act 1967.	

This document is given free of charge without any obligation to enter into a hire-purchase agreement.

I/We.....NRIC No..... of .....hereby acknowledge receipt of this document.

Signature.....

Date.....

NOTE:

\*Price stated will be valid for a period of 7 days.

\*\*where the terms charges are at a variable rate, the particulars specified shall be based on the BLR applicable at the time of serving of this written statement.

\*\*\*Strike out whichever is inapplicable.

Part II

[Subparagraph 4(1)(b)(ii)]

CONSENT OF PROSPECTIVE OWNER

To .....  
.....

TAKE NOTICE that .....  
NRIC No.....of .....  
intends to enter into a hire-purchase agreement in respect of ..... and  
a copy of a summary of his financial obligations under the proposed hire-  
purchase agreement has been served on him on the .....  
day of .....20....., a copy of which is attached herewith,  
pursuant to subparagraph 4(1)(b)(i) of the Hire-Purchase Act 1967.

2. If you agree to be a party as owner in the proposed hire-purchase agreement,  
kindly confirm by signing at the appropriate column of this document.

(Signature of Dealer)

Name:.....

Address:.....

Date:.....

To.....  
.....

\*I/We .....  
 hereby agree to be a party as owner in the proposed hire-purchase  
 agreement.

(Signature of the prospective owner)

Name:.....

Address:.....

Date:.....

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\*NOTE:

Insert description of goods.

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THIRD SCHEDULE

*(Deleted by Act A813)*

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FOURTH SCHEDULE

[Section 16]

NOTICE OF INTENTION TO RE-POSSESS

Take notice that we..... the owner  
 of\*..... hired by you under an agreement dated the .....  
 ....., intends to retake possession of the goods after the expiration  
 of..... days from the service of this notice unless the  
 arrears of instalments including arrears of interest due on overdue instalments  
 which now amount to RM ..... are paid to ..... at  
 ..... on or before .....

(a) Total amount payable \*\* as at ...../...../.....: RM.....

(b) Amount paid or provided by hirer to \*\*\* ...../...../..... RM.....

(c) Arrears under agreement to ...../...../.....: RM.....

And further take notice that if the goods are returned to the owner within twenty-one days after the service on you of this notice, you will not be liable to pay the following namely:

- (i) cost of repossession;
- (ii) cost incidental to taking possession; and
- (iii) cost of storage.

NOTE:

\*Insert description of goods.

\*\*Where terms charges at a variable rate, the total amount payable consists of outstanding amount financed and terms charges accrued up to the date, indicated above.

\*\*\*Not applicable if the terms charges are at a variable rate.

FIFTH SCHEDULE

NOTICE TO HIRERS UNDER SECTION 16

Now that the goods you hired have been re-possessed you will be entitled to get them back—

- (a) if, within twenty-one days you require the owner, by notice in writing signed by you or your agent, to re-deliver the goods to you and if, within twenty-one days after giving the notice, you reinstate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the owner’s expenses in remedying them):

The owner’s estimate of the amount you must pay to reinstate the agreement is—

Arrears of instalments	RM.....
Arrears of interest due on overdue instalments	RM.....
Cost of storage, repair or maintenance	RM.....
Cost of re-possession	RM.....
Cost of re-delivery	RM.....
Total	RM

or

- (b) if within twenty-one days, you give notice of intention to finalise the agreement and pay the balance due under the agreement and costs of the re-possession:

The owner's estimate of the amount required to finalise the agreement is—

- (i) where in the hire-purchase agreement the terms charges are at a fixed rate:

Total amount payable under the agreement	RM.....
<i>Less</i> deposit and instalments paid	RM.....
Balance due under agreement	RM.....
<i>Less</i> statutory rebates	RM.....
<i>Add</i> arrears of interest due on overdue interests	RM.....
<i>Add</i> costs of re-possession	RM.....
Storage, repair or maintenance	RM.....
Total	<u>RM</u>

or

- (ii) where in the hire-purchase agreement the terms charges are at a variable rate:

Balance outstanding under the hire-purchase agreement as at.....	RM.....
<i>Less</i> statutory rebates	RM.....
<i>Add</i> arrears of interest due on overdue interests	RM.....
<i>Add</i> costs of re-possession	RM.....
Storage, repair or maintenance	RM.....
Total	<u>RM</u>

- (c) If you do not reinstate or finalise the agreement you will be liable for the owner's loss unless the value of the goods re-possessed is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The owner's estimate of the value of the goods re-possesses is RM.....

\* On the basis of that estimates you are entitled to a refund of RM.....

You are liable to pay the owner RM.....

NOTE—You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner’s estimate of the value, i.e.,+

DO NOT DELAY

Action to enforce your rights should be taken at once. You will lose your rights twenty one days after the service or posting of this notice if you do not take action.

NOTE—Where this notice is sent to a guarantor it shall be endorsed as follows:

This notice is sent to you as guarantor of .....

As guarantor you have certain rights under the Hire-Purchase Act 1967 and you are advised to seek advice at once.

NOTE:

\*Strike out whichever is inapplicable.

+Insert owner’s estimates of value.

SIXTH SCHEDULE

[Section 30]

TERMS CHARGES

1. Where the terms charges are at a fixed rate, the terms charges shall be calculated in accordance with the following formula:

R = (100 x C) / (T x P)

Where

R represents the terms charges calculated as a rate per centum per annum.

C represents the amount of terms charges expressed in ringgit and fractions of ringgit.

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with—

- (a) one week where the instalments are payable under the agreement at regular weekly intervals;
- (b) two weeks where the instalments are payable under the agreement at regular fortnightly intervals;
- (c) one month where the instalments are payable under the agreement at regular monthly intervals,

expressed in years and fractions of years.

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (a) freight, if any; and
- (b) vehicle registration fees, if any; and
- (c) insurance, if any,

expressed in ringgit and sen.

2. Where the terms charges are at a variable rate, the terms charges shall be calculated in accordance with the following formula:

$$\left[ \left( \frac{P(R/T)}{100 \{1 - (1 + (R/T)/100)^{-N}\}} \right) \times N \right] - P$$

Where

R represents the terms charges calculated as a rate per centum per annum (based on total of Base Lending Rate (BLR) plus margin)

T represents the number of scheduled payments per annum

N represents the total number of instalments for the hiring period

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with—

- (a) freight, if any; and
- (b) vehicle registration fees, if any; and
- (c) insurance, if any,

expressed in ringgit and sen.

SEVENTH SCHEDULE

[Section 4c]

ANNUAL PERCENTAGE RATE

The annual percentage rate shall be calculated in accordance with the following formula:

$$\frac{2 NF (300C + NF)}{2 N^2F + 300C (N + 1)}$$

Where

- N is the total number of instalments.
- C is the number of instalments that, under the contract, will be paid in one year or, where the contract is to be completed in less than one year, the number of instalments that would be paid in one year if instalments continued to be paid at the same intervals.
- F is the amount determined in accordance with the formula—

$$\frac{100C \times T}{N \times A}$$

Where

- C is the same number as the first-mentioned formula.
  - T is the total amount of the pre-determined terms charges.
  - N is the total number of instalments.
  - A is the amount financed.
-

## LAWS OF MALAYSIA

### Act 212

#### HIRE-PURCHASE ACT 1967

##### LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 4/1968	Hire-Purchase (Amendment) Act 1968	21-03-1968
Act A20	Hire-Purchase (Amendment) Act 1969	28-03-1969
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A332	Hire-Purchase (Amendment) Act 1976	27-02-1976
P.U. (A) 221/1980	Hire-Purchase Order 1980	01-08-1980
P.U. (A) 149/1983	Hire-Purchase (Amendment of First Schedule) Order 1983	01-05-1983
Act A813	Hire-Purchase (Amendment) Act 1992	01-06-1992
Act A1234	Hire-Purchase (Amendment) Act 2004	15-04-2005
P.U. (A) 163/2005	Hire-Purchase (Amendment of Schedule) Order 2005	15-04-2005
Act A1384	Hire-Purchase (Amendment) Act 2010	15-06-2011

# LAWS OF MALAYSIA

## Act 212

### HIRE-PURCHASE ACT 1967

#### LIST OF SECTION AMENDED

Section	Amending authority	In force from
Long title	Act A1384	15-06-2011
1	Act A332 Act A1234	27-02-1976 15-04-2005
2	Act A332 Act A813 Act A1234	27-02-1976 01-06-1992 15-04-2005
3	Act A813	01-06-1992
4	Act A813 Act A1384	01-06-1992 15-06-2011
4A	Act A813 Act A1384	01-06-1992 15-06-2011
4B	Act A813 Act A1384	01-06-1992 15-06-2011
4C	Act A813 Act A1234	01-06-1992 15-04-2005
4D	Act A813	01-06-1992
4E	Act A1384	15-06-2011
4F	Act A1384	15-06-2011
4G	Act A1384	15-06-2011
5	Act A813 Act A1384	01-06-1992 15-06-2011
6	Act A813	01-06-1992
6A-6C	Act A1234	15-04-2005
9	Act A813	01-06-1992
12	Act A813	01-06-1992

Section	Amending authority	In force from
14	Act A813 Act A1234	01-06-1992 15-04-2005
15	Act A813 Act A1234	01-06-1992 15-04-2005
16	Act A813 Act A1384	01-06-1992 15-06-2011
16A	Act A813	01-06-1992
17	Act A813	01-06-1992
17A	Act A1384	15-06-2011
17B	Act A1384	15-06-2011
18	Act A813 Act A1234	01-06-1992 15-04-2005
19	Act A813	01-06-1992
20A	Act A813	01-06-1992
26	Act A813	01-06-1992
29	Act A813	01-06-1992
30A	Act A1384	15-06-2011
31	Act A1384	15-06-2011
34	Act A1234	15-04-2005
36	Act A1384	15-06-2011
36A-36D	Act A813	01-06-1992
37	Act A813	01-06-1992
38	Act A1384	15-06-2011
39	Act A813 Act A1234	01-06-1992 15-04-2005
43	Act A813	01-06-1992
43A	Act A813	01-06-1992

Section	Amending authority	In force from
44	Act A813	01-06-1992
45	Act A1384	15-06-2011
46	Act A1384	15-06-2011
50	Act A1384	15-06-2011
50A	Act A1384	15-06-2011
50B	Act A1384	15-06-2011
51	Act A1384	15-06-2011
51A	Act A813	01-06-1992
51B	Act A813 Act A1384	01-06-1992 15-06-2011
51C	Act A1384	15-06-2011
51D	Act A1384	15-06-2011
51E	Act A1384	15-06-2011
52	Act A813	01-06-1992
53	Act A1384	15-06-2011
55	Act A1384	15-06-2011
55A	Act A813 Act A1384	01-06-1992 15-06-2011
55B	Act A1384	15-06-2011
55C	Act A1384	15-06-2011
56	Act A813 Act A1384	01-06-1992 15-06-2011
56A	Act A813	01-06-1992
56B	Act A1384	15-06-2011
57	Act A813 Act A1384	01-06-1992 15-06-2011
57A	Act A1234	15-04-2005

Section	Amending authority	In force from
First Schedule	P.U. (A) 221/1980	01-08-1980
	P.U. (A) 149/1983	01-05-1983
	Act A813	01-06-1992
Second Schedule	Act A813	01-06-1992
	P.U. (A) 163/2005	15-04-2005
Third Schedule	Act A813	01-06-1992
	P.U. (A) 163/2005	15-04-2005
Fourth Schedule	Act A813	01-06-1992
Fifth Schedule	Act A813	01-06-1992
	P.U. (A) 163/2005	15-04-2005
Sixth Schedule	P.U. (A) 163/2005	15-04-2005
Seventh Schedule	Act A813	10-06-1992