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Notice to be included in Conditional Sale Agreement

N.R.C.D. 292

HIRE-PURCHASE ACT, 1974¹

AN ACT to provide for the regulation of hire-purchase agreements and conditional sale agreements and for related matters.

*Requirements of Agreement***1. Enforcement conditional**

(1) Where goods are let under a hire-purchase agreement, or are sold under a conditional sale agreement, the owner or seller is not entitled to enforce the agreement unless,

- (a) the agreement is in writing and signed by the hirer or buyer and by or on behalf of any other parties to the agreement; and
- (b) the requirements of sections 2 to 4 are complied with.

(2) Where the owner or seller is not entitled to enforce an agreement,

- (a) the owner or seller is not entitled to enforce a contract of guarantee relating to that agreement;
- (b) a security given by the hirer or buyer in respect of money payable under the agreement, or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, is not enforceable against the hirer, or against the guarantor, by the holder of the security; and
- (c) the owner or seller is not entitled to enforce a right to recover the goods from the hirer or buyer.

1. This Act was issued as the Hire-purchase Decree, 1974 (N.R.C.D. 292) made on the 6th day of October, 1974, and notified in the *Gazette* on 11th October, 1974. The Memorandum to the Decree appears at the end of the text of the Act.

2. Requirements before agreement

Before an agreement is made, the seller or owner shall state orally and in writing to the prospective buyer or hirer, otherwise than in the agreement referred to in section 1, the price at which the goods may be purchased for cash and the hire-purchase price or total purchase price.

3. Requirements of agreement

(1) The agreement shall contain

- (a) a statement of the cash price and the hire-purchase price or total purchase price of the goods;
- (b) the amount of each instalment by which the price is to be paid and the date or the mode of determining the date on which each instalment is payable;
- (c) a description or list of the goods to which the agreement relates sufficient to identify the goods; and
- (d) a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms set out in the First or Second Schedule.

(2) A copy of the agreement shall be delivered or sent to the hirer or buyer within fourteen days after the making of the agreement.

(3) If satisfied in an action that a failure to comply with a requirement specified in paragraph (b) or (c) of subsection (1) or subsection (2) has not prejudiced the buyer or hirer, and that it would be just and equitable to dispense with the requirement, the Court may, subject to the conditions that it may impose, dispense with that requirement for the purposes of the action.

4. Avoidance of certain provisions

A provision in a hire-purchase or conditional sale agreement is void to the extent that it provides that,

- (a) an owner or seller or any other person acting on behalf of the owner or seller is authorised to enter on private land or premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement or sold under a conditional sale agreement or is relieved from liability for the entry; or
- (b) the right conferred on a hirer by section 5 to terminate the hire-purchase agreement is excluded or restricted, or a liability beyond that imposed by section 6 is imposed on a hirer by reason of the termination of the hire-purchase agreement by the hirer or under that section; or
- (c) a hirer, after the termination of the hire-purchase agreement or the bailment is subject to a liability which exceeds the liability to which the hirer would have been subject if the agreement had been terminated by the hirer under this Act; or
- (d) a person acting on behalf of an owner or a seller in connection with a hire-purchase or conditional sale agreement is treated as or deemed to be an agent of the hirer or buyer; or

- (e) an owner or seller is relieved from liability for the acts or defaults of a person acting on behalf of the owner or seller in connection with a hire-purchase or conditional sale agreement.

Termination and Completion

5. Right to terminate

(1) Subject to subsection (2), but despite anything in the agreement, the hirer or buyer is entitled at any time before the final payment under a hire-purchase agreement or a conditional sale agreement falls due, to terminate the agreement by giving written notice of the termination to a person entitled to receive payments under the agreement.

(2) In the case of a conditional sale agreement, where the property in the goods has become vested in the buyer before final payment is made, and the buyer has transferred the goods to a third person, the buyer is not entitled to terminate the agreement under this section.

(3) Subject to subsection (2), where a buyer under a conditional sale agreement terminates the agreement after the property in the goods has become vested in the buyer and before final payment is made, the property in the goods shall vest in the previous owner in whom it was vested immediately before it became vested in the buyer.

(4) Where the previous owner has died, or any other event has occurred by which that property, if vested in the previous owner immediately before that event, would have vested in any other person, the property shall be treated as having devolved as if it had been vested in the previous owner immediately before the death of the previous owner or immediately before that event.

6. Liability after notice of termination

(1) Subject to this section, and without prejudice to a liability which has accrued before the termination, where the hirer or the buyer terminates the agreement by virtue of section 5, the hirer or buyer is liable to pay the difference between the total of the sums of money paid and one half of the hire-purchase or the total purchase price, or if the agreement specifies a lesser amount, the buyer is liable to pay the amount so specified.

(2) Where an agreement is terminated under section 5, the hirer or buyer shall return the goods, at the expense of the hirer or buyer, to the premises from which they were originally supplied or to any other place as the owner or seller may direct, but the owner or seller shall, at the expense of the owner or seller, provide for the additional expense incurred in returning the goods to premises other than those from which they were originally supplied.

(3) Where an agreement is terminated under section 5, the hirer or buyer, who has failed to take reasonable care of the goods is liable to compensate the owner or seller for the loss or damage caused by the failure.

(4) Where a hirer or buyer, having terminated an agreement under section 5, wrongly retains possession of the goods, then, in an action brought by the owner or seller to recover possession of the goods, the Court shall order the goods to be delivered to the owner or seller without giving the hirer or buyer an option to pay for the goods.

(5) The Court shall not make an order under subsection (4) unless it is satisfied that having regard to the circumstances it would not be just and equitable to do so.

7. Completion of agreement

(1) The hirer under a hire-purchase agreement or the buyer under a conditional sale agreement may give notice in writing to the owner or seller of the intention to complete the purchase of the goods by paying or tendering to the owner or seller on a specified day the net balance due under the agreement, and having given the notice may complete the purchase accordingly on the day specified.

(2) For the purposes of subsection (1), the net balance due is the hire-purchase price or the total purchase price, originally payable under the agreement less the amounts paid or provided, whether by cash or by any other consideration by or on behalf of the hirer or buyer under the agreement.

(3) The rights conferred on the hirer or buyer by this section may be exercised

- (a) at any time during the continuance of the agreement, or
- (b) within twenty-eight days after the owner has taken possession of the goods, on paying or tendering to the owner in addition to the net balance due
 - (i) the reasonable costs incurred by the owner in and incidental to taking possession of the goods, and
 - (ii) the amount of money properly expended by the owner on the storage, repair or maintenance of the goods.

(4) For the purposes of paragraph (b) of subsection (3), the owner shall not dispose of the goods during the period of twenty-eight days.

Protected Goods

8. Restriction on recovery of protected goods

(1) The owner or seller shall not enforce a right to recover possession of protected goods from the hirer or buyer otherwise than by an action.

(2) Where the owner or seller recovers possession of protected goods in contravention of subsection (1), the agreement, if not previously terminated, is terminated, and

- (a) the hirer or buyer is released from liability under the agreement, and is entitled to recover from the owner or seller, in an action for money had and received, the sums of money paid by the hirer or buyer and the security given in respect the agreement; and
- (b) the guarantor is entitled to recover from the owner or seller, in an action for money had and received, the sums of money paid under the contract of guarantee or under a security given in respect of the agreement.

(3) Despite subsection (2), the Court may, on an application by the hirer or buyer, make an order for the return of the goods to the hirer or buyer and for the rescheduling of payments due under the agreement.

- (4) For the purposes of this section, “**protected goods**” are goods
- (a) which have been let under a hire-purchase agreement or sold under a conditional sale agreement,
 - (b) one-half of the price or total purchase price of which has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer or buyer or a guarantor, and
 - (c) in relation to which the hirer or buyer has not terminated the hire-purchase agreement or conditional sale agreement, or, in the case of a hire-purchase agreement, the bailment, by virtue of a right vested in the hirer.

9. Recovery of protected goods

(1) Where an owner or a seller brings an action to recover possession of protected goods,

- (a) the Court may, pending the hearing of the action, and on its own motion or on an application, make the appropriate orders for the purpose of protecting the goods from damage or depreciation;
- (b) the Court may, subject to sections 10 and 11, on the hearing of the action, without prejudice to any other power,
 - (i) make an order for the specific delivery of the goods to the owner or seller subject to the conditions that the owner or seller refunds to the hirer or buyer the part of the sums of money paid that the Court may direct; or
 - (ii) make an order for the specific delivery of the goods to the owner or seller and postpone the operation of the order on condition that the hirer or buyer or a guarantor pays the unpaid balance of the hire-purchase price or the total purchase price at the times and in the amounts that the Court having regard to the means of the hirer or buyer and of a guarantor, thinks just, and subject to the fulfilment by the hirer or buyer or a guarantor of any other conditions that the Court thinks just; or
 - (iii) make an order for the specific delivery of a part of the goods to the owner or seller and for the transfer to the hirer or buyer of the owner’s or seller’s title to the remainder of the goods.

(2) For the purpose of this Act, a reference to an order for the specific delivery of goods is a reference to an order for the delivery of those goods without giving the hirer or buyer an option to pay their value.

(3) This section does not affect the liability of the hirer or buyer to the owner or seller for harm done to the goods intentionally or negligently.

10. Postponement of order

(1) The operation of an order for the specific delivery of goods to the owner or seller shall not be postponed unless the hirer or buyer satisfies the Court that the goods are in the possession or control of the hirer or buyer at the time when the order is made.

(2) Where in an action to which section 9 applies, an offer as to the conditions for the postponement of the operation of an order is made by the hirer or buyer, and accepted by the owner or seller, the Court may make the order, and postpone its operation, in accordance with the offer without hearing evidence as to any of the matters mentioned in section 9 (1) (b) (ii) and in subsection (1) of this section.

11. Effect of postponed order

(1) Where the operation of an order for the specific delivery of goods to the owner or seller is postponed, the hirer or buyer is, for the purposes of this Act, and, subject to this section, a bailee of the goods in accordance with the terms of the agreement.

(2) A further sum of money shall not be or become payable by the hirer or buyer or a guarantor on account of the unpaid balance of the hire-purchase price, except in accordance with the terms of the order.

(3) The Court may make a further modification of the agreement, and of a contract of guarantee relating to the agreement, that the Court considers necessary having regard to the variation of the terms of payment.

(4) Where the operation of the order is postponed, and the hirer or buyer or a guarantor fails to comply with a condition of the postponement, or with a term of the agreement as varied by the Court, or wrongfully disposes of the goods, the owner or seller shall not initiate an action in a court against the hirer or buyer or guarantor otherwise than by making an application to the Court by which the order was made for a modification of the order or of its postponement.

(5) Where the unpaid balance of the hire-purchase price has been paid in accordance with the terms of the order, the owner's or seller's title to the goods shall vest in the hirer or buyer.

(6) The Court may, on the application of the hirer or buyer or the owner or seller, at any time during the postponement of the operation of the order revoke, or vary the order, and may make any other order under section 9.

Representations and Terms

12. Dealer as agent

(1) Despite anything in the agreement to the contrary, where a person lets goods under a hire-purchase agreement, or sells goods under a conditional sale agreement, the representations with respect to the goods to which the agreement relates which were made, orally or in writing, to the hirer or buyer by a dealer or salesman of the goods in the course of the antecedent negotiations conducted by that dealer or salesman shall be deemed to have been made by the dealer or salesman as agent of the owner or seller.

(2) This section does not exonerate a person from a liability to which that person would be subject but for this section.

(3) In this section "**representations**" include a statement or an undertaking, whether constituting a condition or a warranty or not.

13. Implied terms

(1) Despite an agreement to the contrary, in a hire-purchase or conditional sale agreement it is an implied term

- (a) that the hirer or buyer shall have and enjoy quiet possession of the goods,
- (b) that the goods are free from a charge or an encumbrance in favour of a third party at the time when the property is to pass, and
- (c) that the owner or seller has a right to sell the goods at the time when the property is to pass.

(2) Where the hirer or buyer, whether expressly or by necessary implication,

- (a) has made known to the owner or seller, or to a servant or agent of the owner or seller, the particular purpose for which the goods are required, or
- (b) in the course of the antecedent negotiations has made that purpose known to a person by whom those negotiations were conducted, or to a servant or agent of that person,

it is an implied term, subject to section 14, that the goods are reasonably fit for that purpose.

(3) A breach of a term specified in this section by the owner or seller gives the hirer or buyer a right to damages in respect of the breach, or to any other remedy that the Court thinks appropriate.

14. Implied term as to merchantability

(1) Subject to this section, in a hire-purchase agreement or conditional sale agreement it is an implied term that the goods are of merchantable quality at the time of delivery.

(2) Where the hirer or buyer has examined the goods or a sample of the goods before delivery, the term referred to in subsection (1) shall not be implied in respect of defects which the examination ought to have revealed.

(3) Where the goods are let or sold as second-hand goods, and the agreement contains a statement to that effect and a provision that the term referred to in subsection (1) is excluded in relation to those goods, then subject to subsection (5) that term shall not be implied in relation to those goods.

(4) Where the goods are let or sold as being subject to a defect specified in the agreement, whether referred to in the agreement as a defect or by any other description to the like effect, and the agreement contains a provision that the term referred to in subsection (1) is excluded in relation to those goods in respect of that defect, then subject to subsection (5) that term shall not be implied in respect of that defect.

(5) The owner or seller is not entitled to rely on a provision in a hire-purchase agreement or conditional sale agreement excluding or modifying the term referred to in subsection (1) unless the owner or seller proves that before the agreement was made

- (a) the owner or seller had brought that provision to the notice of the hirer or buyer and made its effect clear to the hirer or buyer, and

- (b) where the exclusion or modification is in relation to a defect, the owner or seller had brought that defect to the notice of the hirer or buyer.

(6) A breach of a provision of this section by the owner or seller gives the hirer or buyer a right to rescind the agreement.

15. Further implied terms in special cases

(1) Where goods under a hire-purchase agreement, or under a conditional sale agreement, are let or sold by reference to a sample, there is an implied term in the agreement,

- (a) that the bulk will correspond exactly with the sample, and
 (b) that the hirer or buyer will have a reasonable opportunity of comparing the bulk with the sample.

(2) Where goods under a hire-purchase agreement, or under a conditional sale agreement, are let or sold by description, there shall be implied in the agreement that the goods correspond exactly with the description.

(3) Where the goods are let or sold under the agreement by reference to a sample as well as by description, there is an implied term in the agreement that the goods correspond both with the sample and the description.

(4) A breach of a term specified in this section by the owner or seller gives the hirer or buyer the right to rescind the agreement.

Miscellaneous

16. Third parties

(1) Where a hirer or buyer under a hire-purchase agreement or conditional sale agreement

- (a) resells, pledges or otherwise disposes of the goods for value to a third party under circumstances that the sale, pledge or the other disposition would not, but for this section, transfer a title to the goods to the third party, and
 (b) does anything which gives the owner or seller a right to terminate the agreement and recover the goods under sections 8 to 11,

the third party may retain possession of the goods for the period of sixty days specified in subsection (7) or, if they have been repossessed by the owner or seller, the third party is entitled to recover possession of the goods on a request in writing to the owner or seller and may retain the goods for the period of sixty days specified in subsection (7).

(2) Where within sixty days the third party pays or tenders to the owner or seller

- (a) the amounts due and unpaid from the hirer or buyer to the owner or seller, or
 (b) the total amount due under any three instalments due and unpaid from the hirer or buyer to the owner or seller,

whichever is less, the rights and obligations of the hirer or buyer shall be transferred to the third party who shall be treated as the hirer or buyer for the purposes of the agreement and this Act.

(3) Where the third party pays or tenders the total amount due under any three instalments under subsection (2) (b),

- (a) the third party is not liable to the owner or seller for an amount of money then outstanding in excess of the three instalments;
- (b) the third party is entitled to recover from the hirer or buyer the amount of money of the three instalments which have been paid to the owner or seller;
- (c) the owner or seller shall recover from the hirer or buyer the amounts of money then outstanding in excess of the three instalments;
- (d) the contract between the third party and the hirer or buyer shall terminate except with regard to the payment of the amounts of money then outstanding.

(4) Where a third party has not paid anything to the hirer or buyer or is in arrears of payment to the hirer or buyer, the third party shall pay to the owner or seller not only the three instalments but also what the third party owes to the hirer or buyer.

(5) The total amount of money payable under subsection (4) shall not exceed the total of the amounts of money due and unpaid from the hirer or buyer to the owner or seller, and the owner or seller shall credit to the third party in respect of immediate future payments payable by the third party the amounts of money so paid by the third party in excess of the three instalments.

(6) This section does not

- (a) derogate from the powers of a hirer or buyer in whom the property in goods has vested;
- (b) affect the liability of the hirer or buyer for a wrongful sale, pledge or any other disposition for value of the goods or documents of title;
- (c) derogate from a liability of the hirer or buyer to a third party or to the owner or seller.

(7) For the purposes of this section, the sixty-day period commences

- (a) when the third party recovers possession of the goods from the owner or seller, if the owner or seller has repossessed the goods; or
- (b) when the seller or owner notifies the third party in writing of the right to repossess the goods or the right to bring an action to repossess the goods under sections 8 to 11.

(8) This section applies to goods which have been let under a hire-purchase agreement or sold under a conditional sale agreement, and which are subsequently transferred under a sale, pledge, or any other disposition for value to a person receiving them in good faith and without notice of the hirer's or buyer's lack of title, despite any other provision in this Act.

17. Limitation on enforcement of agreement

An owner or a seller is not entitled by reason of the hirer's or buyer's failure to carry out an obligation under a hire-purchase agreement or conditional sale agreement, to enforce a provision in the agreement

- (a) for the payment of an amount of damages or forfeiture or penalty, or
- (b) for the acceleration of the payment of an instalment, or
- (c) for termination of the agreement, or
- (d) for repossession,

unless the owner or seller has made written demand to the hirer or buyer to carry out that obligation within a specified period of not less than fourteen days beginning with the date of service of the demand, and the hirer or buyer has failed to comply with the demand in the specified period.

18. Information to seller

(1) Where by virtue of a hire-purchase agreement or a conditional sale agreement a hirer or buyer is under a duty to keep the goods comprised in the agreement in possession or control, the hirer or buyer shall, on receipt of a request in writing from the owner or seller, inform the owner or seller where the goods are at the time when the information is given, or if the information is sent by post, at the time of posting.

(2) Where a hirer or buyer fails without reasonable cause to give within fourteen days of the receipt of notice, the information required under subsection (1), the hirer or buyer commits an offence and is liable on summary conviction to a fine not exceeding twenty-five penalty units.

19. Removal of goods from the Republic

(1) The hirer or buyer of goods under a hire-purchase agreement or conditional sale agreement shall not remove the goods from the Republic without the written consent of the owner or seller.

(2) A hirer or buyer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

(3) A person shall not be convicted by virtue of subsection (2) if the Court is satisfied that the hirer or buyer did not intend to deprive the owner or seller of ownership of the goods or to defeat the rights of the owner or seller to obtain a payment due to the owner or seller.

(4) Where the owner or seller believes that the goods have been removed or are being removed or are about to be removed from the Republic without the written consent of the owner or seller, and with intent to deprive the owner or seller of ownership or to defeat the rights of the owner or seller to obtain a due payment under the agreement, the owner or seller may institute an action for the return of the goods.

(5) Before instituting an action under of subsection (4), or while the action is pending, the owner may apply to the Court for an order for the attachment of the goods.

(6) A Court which makes an order for the attachment of goods under subsection (5) may require the applicant to give security for damage resulting from the order.

(7) An order for the attachment of goods under this section

- (a) may be discharged or varied by the Court for good cause shown by a person affected by the order and on the terms as to costs that the Court thinks fit; and
- (b) shall be discharged on the hirer or buyer giving security that the Court thinks proper, taking into account the value of the goods, the amount due to the owner or seller under the agreement, and the costs of the owner or seller.

20. Supply of documents and information

(1) Before the final payment is made under a hire-purchase agreement or conditional sale agreement, the owner or seller shall, within seven days after the receipt of a request in writing from the hirer or buyer and the hirer or buyer has tendered to the owner or seller a reasonable sum of money for expenses, supply to the hirer or buyer a copy of the agreement together with a statement signed by the seller or owner or the agent of the owner or seller showing

- (a) the amount of money paid by or on behalf of the hirer or buyer,
- (b) the amount of money which is due under the contract but remains unpaid, and the date on which each unpaid instalment became due and the amount of that instalment, and
- (c) the amount of money which is payable under the agreement, and the date or the mode of determining the date on which each future instalment is to become payable, and the amount of that instalment.

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

- (a) the owner or seller is not entitled to enforce the agreement against the buyer or hirer, or to enforce a contract of guarantee relating to the contract, or to enforce a right to recover the goods from the buyer or hirer; and
- (b) the security given by the buyer or hirer, in respect of money payable under the contract or given by a guarantor in respect of money payable under the contract of guarantee is not enforceable against the buyer or hirer or the guarantor by a holder of the security; and

if the default continues for a period of thirty days, the defaulter commits an offence under this section and is liable on conviction to a fine not exceeding twenty-five penalty units.

21. Successive agreements

Where goods have been let under a hire-purchase agreement or are sold under a conditional sale agreement and

- (a) a part of the hire-purchase or the total purchase price has been paid or tendered, and

(b) the owner or seller makes a subsequent hire-purchase agreement or conditional sale agreement in respect of the same goods, sections 8 to 11 shall have effect in relation to a further agreement as from the time when one half of the hire-purchase price or total purchase price specified in the first agreement has been paid or tendered.

22. Regulations

(1) The Minister responsible for Trade may, by legislative instrument, make Regulations providing for the regulation and control of the letting of goods under hire-purchase agreements and the sale of goods under conditional sale agreements.

(2) Regulations under subsection (1), may provide for

- (a) the form of the agreement;
- (b) limiting the rate of interest and any other charges;
- (c) the minimum deposit to be paid by a buyer;
- (d) the maximum period of payment and the amount and frequency of instalments or rentals;
- (e) the appropriation of payments as between two or more agreements between the seller or owner and the buyer or hirer;
- (f) the information to be given in an advertisement or announcement published or made in a form or manner relating to goods to be disposed of by hire-purchase or conditional sale agreement regarding the terms on which the goods will be sold;
- (g) the inclusion in an advertisement or announcement of a statement of the price at which the goods will be sold for cash.

(3) The Regulations may provide that a person who lets or sells goods to which the Regulations apply is not entitled to enforce an agreement for the sale or a right to recover the goods unless specified provisions of the Regulations are complied with.

(4) The Regulations may prescribe for goods generally or for a class or description of goods, a minimum amount of money for the purposes of sections 8 to 11 in lieu of one half of the hire purchase price or total purchase price.

23. Variation of rights, duties and liabilities

Subject to this Act, the rights, duties and liabilities of the parties to a hire-purchase agreement or a conditional sale agreement as laid down in this Act may, as between the parties themselves, be varied

- (a) by express agreement, or
- (b) by the course of dealing between the parties, or
- (c) by a custom whether a rule of customary law or not, which the parties may be taken to have agreed to be applicable to the agreement.

24. Interpretation

- (1) In the Act, unless the content otherwise requires,
“action” includes a judicial proceeding instituted in a Court;

“buyer” in relation to a conditional sale agreement, includes the person who agrees to purchase goods under the agreement and a person under the agreement to whom the rights or liabilities of that person under the agreement have passed by assignment or by operation of law;

“cash price” means the price at which the goods may be purchased for cash;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, the property in the goods is to remain in the seller although that the buyer is to be in possession of the goods and under which certain conditions specified in the agreement are to be fulfilled by the buyer;

“contract of guarantee” means a contract to guarantee the performance of the hirer’s or buyer’s obligations under the hire-purchase agreement or conditional sale agreement, or to indemnify the owner or seller against a loss which the owner or seller may incur in respect of that agreement;

“Court” means a court of competent jurisdiction;

“dealer” means a person in the business of buying or selling goods;

“guarantor” means a person who enters into a contract to guarantee the performance of the hirer’s or buyer’s obligations under the hire-purchase agreement or conditional sale agreement, or to indemnify the owner or seller against a loss which the owner or seller may incur in respect of that agreement;

“hire-purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee; and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement there is a bailment of goods and either the bailee may buy the goods or the property in them will or may pass to the bailee the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made;

“hire-purchase price” means subject to subsection (2), the total sum of money payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates, exclusive of a sum of money payable as a penalty or as compensation or damages for a breach of the agreement;

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

“owner” includes the person who lets or has let goods to a hirer under a hire-purchase agreement and a person to whom the owner’s property in the goods or any of the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law, and a person, other than the buyer, to whom that person’s property in the goods or any of that person’s rights or liabilities under the agreement have passed by assignment or by operation of law;

“postponed” means postponed under section 9 (1) (b) (ii);

“property” means the general property in the goods and not merely a special property;

“protected goods” has the meaning assigned to it in section 8 (4);

“Regulations” means the Regulations made under section 22;

“representations” has the meaning assigned to it in section 12 (3);

“salesman” means a person whose occupation is to sell goods;

“seller”, in relation to a conditional sale agreement, includes the person who agrees to sell goods under the agreement and a person, other than the buyer, to whom that person's property in the goods or any of that person's rights or liabilities under the agreement have passed by assignment or by operation of law;

“total purchase price” means, subject to subsection (2), the total sum of money payable by the buyer under a conditional sale agreement, exclusive of a sum of money payable as a penalty or as compensation or damages for a breach of the agreement.

(2) For the purposes of this Act, a sum of money payable by the hirer under a hire-purchase agreement, or by the buyer under a conditional sale agreement, by way of a deposit or any other initial payment, or credited or to be credited to the hirer under the agreement or account of the deposit or payment, whether that sum of money is to be or has been paid to a person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means, shall form part of the hire-purchase price or total purchase price.

(3) In this Act **“antecedent negotiations”**, in relation to a hire-purchase agreement or conditional sale agreement, means the negotiations or arrangements with the hirer or buyer by which the hirer or buyer was induced to make the agreement or which otherwise promoted the transaction to which the agreement relates; and a reference in this Act to the person by whom the antecedent negotiations were conducted is a reference to the person by whom those negotiations or arrangements were conducted or made in the course of a business carried on by that person.

(4) For the purposes of this Act, a negotiation conducted, or arrangements or representations made, by a servant or agent, if conducted or made by the servant or agent in the course of employment or agency, shall be treated as conducted or made by the employer or principal; and anything received by a servant or agent, if received by the servant or agent in the course of employment or agency, shall be treated as received by the employers or principal.

25. Application

(1) This Act applies to a hire-purchase agreement and to a conditional sale agreement, regardless of the hire-purchase price, cash price, or total purchase price of the goods.

(2) This Act applies to agreements entered into by or on behalf of the Republic as it applies to any other agreements.

(3) The Minister responsible for Finance may, with the approval of the President, by legislative instrument, display all or any of the provisions of this Act to an organisation or a body if it is in the public interest so to do.

(4) *Omitted.*²

26. Repeal

Sections 66 to 75 of the Sale of Goods Act, 1962 (Act 137) and also the definitions of "hire-purchase contract" and "hire-purchase price" in section 81 of that Act are hereby repealed but shall continue to apply to agreements made before the commencement of this Act.

27. Commencement

*Spent.*³

SCHEDULES

FIRST SCHEDULE

[Section 3 (1) (d)]

Notice to be Included in Hire-purchase Agreement

NOTICE

Right of Hirer to Terminate Agreement

1. The hirer may put an end to this agreement
 - (a) by giving notice of termination in writing to a person who is entitled to collect or receive the hire-rent; or
 - (b) in accordance with the terms of the agreement where they are more favourable to the hirer.
2. The hirer must then pay the instalments which are in arrears at the time when the notice is given. If, when those instalments have been paid, the total amount of money which has been paid under the agreement is less than (*here insert the minimum amount which the hirer is required to pay in accordance with sections 5 and 6 of the Hire-purchase Act, 1974*) the hirer must also pay enough to make up that amount.
3. If the hirer fails to take reasonable care of the goods, the hirer may be liable to compensate the owner for a loss or damage caused by that failure.

2. Subsections (3) and (4) are inserted by the Hire Purchase (Amendment) Decree, 1978 (S.M.C.D. 155) but subsection (4) has been omitted since it offends against article 107 of the Constitution. The subsection provides that:

"An instrument made under subsection (3) may be made with retrospective effect up to the commencement of this Decree or any later date and any instrument so made shall operate in respect of all hire-purchase or conditional sale agreements entered into by the organisation or body to which the instrument relates from the date of commencement of that instrument."

3. The section provided that the Act shall come into force on the 1st day of November, 1974.

Restriction of Owner's Right to Recover Goods

4. [After (here insert an amount calculated in accordance with the provisions of sections 8 and 9 of this Act) has been paid, then] unless the hirer has put an end to the agreement, the owner of the goods is not entitled to take them back from the hirer without a Court order or the consent of the hirer.⁴
5. The Court may, on an application by the owner for an order, allow the hirer to keep
- (a) the whole of the goods, on condition that the hirer pays the balance of the price in the manner ordered by the Court; or
 - (b) a fair proportion of the goods having regard to what the hirer has already paid.

SECOND SCHEDULE

[Section 3 (1) (d)]

Notice to be Included in Conditional Sale Agreement

NOTICE

Right of Buyer to Terminate Agreement

1. The buyer may put an end to this agreement
 - (a) by giving notice of termination in writing to a person who is entitled to collect or receive the instalments of the purchase price, or
 - (b) in accordance with the terms of the agreement where they are more favourable to the buyer.
2. The buyer must then pay the instalments which are in arrears at the time when the notice is given. If, when those instalments have been paid, the total amount of money which has been paid under the agreement is less than (here insert the minimum amount which the buyer is required to pay in accordance with sections 5 and 6 of the Hire-purchase Act, 1974) the buyer must also pay enough to make up that amount.
3. If the buyer fails to take reasonable care of the goods the buyer is liable to compensate the owner for a loss or damage caused by that failure.

Restriction of Seller's Right to Recover Goods

4. [After (here insert an amount calculated in accordance with the provisions of sections 8 and 9 of this Act) has been paid, then] unless the buyer has put an end to the agreement, the owner of the goods is not entitled to take them back from the buyer without a Court order or the consent of the hirer.⁵

4. If the agreement is a subsequent agreement to which section 21 of the Act applies, the words in square brackets should be omitted.
5. If the agreement is a subsequent agreement to which section 21 of the Act applies, the words in square brackets should be omitted.

5. The Court may, on an application by the seller for an order, allow the buyer to keep
- (a) the whole of the goods, on condition that the buyer pays the balance of the price in the manner ordered by the Court; or
 - (b) a fair proportion of the goods having regard to what the buyer has already paid.
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MEMORANDUM

This Decree, which follows the recommendations of the Law Reform Commission, modifies the law relating to hire-purchase and conditional sale agreements. Since 1962, these two forms of credit transactions have been regulated by the Sale of Goods Act, 1962 (Act 137). Owing to difficulties caused by the fusion of the law of sale of goods, hire-purchase and conditional sales in one Act, it has been felt advisable to deal with hire-purchase and conditional sales separately in this Decree.

Since many problems relating to hire-purchase and conditional sale agreements stemmed from the definitions in Act 137, these agreements are defined more clearly and fully in this Decree. The formal requirements of these agreements are expanded slightly and spelled out in more detail to ensure that the parties are better able to understand the rights and duties that arise as a result of their bargains.

The law relating to what up to now have been called conditions and warranties has also been simplified, and provision has been made to resolve the problems of assignments of goods taken on hire-purchase and conditional sales to third parties.

Under the Decree, by contrast with Act 137, all hire-purchase and conditional sale agreements are subject to the provisions of the Decree irrespective of the amount involved in the transaction. Under the previous law, the protections afforded could be excluded in transactions where the cash price exceeded ₡2,000.00.

REQUIREMENT OF AGREEMENT

Section 1 broadly describes some of the requirements necessary to make a hire-purchase or conditional sale agreement enforceable by the owner or seller. The agreement must be in writing. Section 1 (1) requires the agreement to be signed.

Section 1 (2) sets out some of the consequences of unenforceability. A guarantor undertakes to pay a debt if the principal debtor fails to pay. Hence if the agreement is unenforceable, the contract of guarantee is unenforceable: see *Coutts and Co. v Browne, Deckey* (1947) K. B. 104 [1946 2 All E.R. 207]. Likewise the holder of a security cannot enforce the security against the hirer, buyer, or guarantor. Failure to have the agreement in writing, signed by the parties will prevent the seller or owner from recovering the goods under the agreement.

Section 2 sets out the requirements that the seller or owner shall state orally and in writing both the cash price and the hire-purchase price before the agreement is made. This substantially re-enacts section 66 (1) of the Sale of Goods Act, 1962 (Act 137). It is felt that the requirement of stating both prices in writing will aid the buyer in understanding the terms of the transaction.

Section 3 which substantially re-enacts section 66 (3) and (4) of the Sale of Goods Act, 1962 (Act 137) requires that the agreement state the cash price and hire-purchase or total purchase price of the goods: see *Trademex v. Baah Ltd.* (1968) C.C. 17. The agreement must

also contain the amount of each instalment and the date when each is due or the mode of determining that date, a list or description sufficient to identify the goods, and a list of the hirer's or buyer's rights. A copy of the agreement must be sent to the hirer or buyer within 14 days. Subsection (3) gives the Court discretion, if the hirer has not been placed at a disadvantage, to dispense with certain of the specified requirements. The discretion granted to the Court does not include the power to dispense with the requirement of statutory notice. The Decree thus endorses the views of the court in *U.T.C. v. Johnson Ikoro* (1965) C.C. 54. c.f. *Mensah v. Osei* [1962] 1 G.L.R. 261.

Section 4 makes void certain clauses in hire-purchase and conditional sale agreements for reasons of public policy. These include clauses providing that an owner or seller or a person acting on his behalf may enter any private premises to effect repossession or may be relieved from liability for such entry. Other clauses which are void are those which exclude or restrict the hirer's right to terminate under section 5 or increase the liability of the hirer as set out in section 6 by reason of termination. Clauses which after termination subject the hirer to liability in excess of that imposed if the agreement were terminated under the Decree, or which treat a person acting on behalf of the owner or seller in connection with a hire-purchase or conditional sale agreement as an agent of the hirer or buyer, or which relieve the owner or seller for acts or defaults or persons acting on his behalf, are also void.

TERMINATION AND COMPLETION

Section 5 gives the hirer or buyer the right to terminate the agreement at any time before final payment is due. Notice in writing is sufficient for such a termination. This right of termination is an essential part of the hire-purchase bailment and should not be eliminated in conditional sale agreements which so closely resemble the former.

Subsections (2) and (3) make special provision for particular circumstances which may arise with regard to conditional sale agreements. Thus, the right to terminate does not continue once the buyer, having had the property vest in him, transfers the property to a third person. When the property has vested in the buyer and he terminates, the property then vests in the person in whom it vested preceding the buyer. The proviso makes provision for the death of the previous owner or other events which prevent the property from being re-vested in him.

Section 6 sets out certain liabilities and duties of the hirer or buyer after termination under section 5. Subsection (1) substantially re-enacts section 68 (2) of the Sale of Goods Act, 1962 (Act 137) and requires the hirer or buyer to pay the difference between the total of the sums paid and one half of the hire-purchase price or total purchase price, or a lesser amount if so specified in the agreement.

Subsection (2) directs the hirer upon termination under this Decree, to return the goods at his own expense to the premises from which they were supplied and provides that the owner or seller shall provide for payment if the owner directs otherwise. Subsection (3) re-enacts section 68 (3) of the Sale of Goods Act, 1962 (Act 137) and makes the hirer or buyer liable for failing to take reasonable care of the goods. Subsection (4) is designed to get the goods into the possession of the owner or seller when the buyer or hirer wrongfully retains them. Thus, the hirer or buyer is not permitted to pay for the goods, but must give them up. The Court may modify the effect of this subsection for reasons of equity and justice.

Section 7 confers on the hirer or buyer the right to complete the purchase of the goods by paying or tendering the net balance due under the agreement, which is defined in subsection (2). Subsection (3) sets out the times at which this right may be exercised. It may be exercised during the continuance of the agreement or within 28 days after the seller or owner has repossessed. If the tender or payment is made after the seller or the owner has repossessed, the buyer

or hirer must in addition pay the reasonable costs incurred in and incidental to repossession and any amount properly expended by the owner on the storage, repair or maintenance of the goods.

PROTECTED GOODS

Section 8 (1) restricts the right of the owner or seller to repossess protected goods by specifying that recovery may only be made by legal proceedings. Subsection (2) states that if the owner or seller recovers possession of protected goods in contravention of subsection (1) the agreement is terminated and the hirer is released from all liability and is entitled to recover all sums paid and security given. This is consistent with the decisions in *de Horne Agah v. Farkye Brothers* (1967) C.C. 120, C.A. and *Danso v. Taylor* (1969) C.C. 152 C.A. Subsection (2) (b) extends this protection to guarantors. Subsection (3) gives the Court discretion to return the goods to the hirer or buyer and reschedule payments, where the Court considers that a just result can be achieved by these means.

Section 9 applies to actions brought by owners or sellers to recover protected goods where there has been no contravention of section 8. Subsection (1) (a) gives the Court power to make appropriate orders to protect the goods when an action is pending. Subsection (1) (b) sets out some of the powers of the Court upon the hearing. The Court may order the delivery of all the goods to the owner subject if necessary to the condition that the owner or seller refunds to the hirer or buyer any part of the price paid: *Barnes v. Ameen Sangari and Co.* (1968) C.C. 57, C.A. Or the Court may make such an order and postpone its operation on the condition that the hirer or buyer or guarantor pay the unpaid balance on terms specified by the Court. The purpose of this subsection is to prevent undue enrichment of the owner or seller at the expense of the hirer or buyer. Subsection (1) (b) (iii) gives the Court power to order specific delivery to the owner or seller of part of the goods and transferring title to the remainder of those goods to the hirer or buyer.

Subsection (2) prevents the hirer or buyer from paying the value of goods where the Court has ordered specific delivery.

Subsection (3) makes it clear that this section does not affect any possible tort liability of the hirer or buyer for damage to the goods.

Section 10 sets out conditions for the postponement of an order for specific delivery. The goods must be in the hirer's or buyer's possession at the time when the order is made. This section helps to ensure that an order, if postponed, can effectively be carried out at a later time. Subsection (2) enables the parties to avoid unnecessary hearings in regard to the possession question.

Section 11 describes the effects of postponed orders, giving discretion to the Court to deal with the order and vary the agreement. This is to enable courts to deal fairly with protected goods and to recognise the conflicting interests and rights that the parties have in these types of goods. Subsection (1) leaves the hirer or buyer in relation to the goods as bailee. Clearly, however, his interest in them transcends this term. Subsection (2) makes clear that the terms of payment under the agreement are suspended and may and sometimes should be varied by the Court. Subsection (3) extends this flexibility to include other terms of the agreement, so that it can be modified as a whole and consistently.

Subsection (4) limits actions involving the protected goods, the order, or the agreement as varied to the Court where the order was made. This should enable the Court to deal comprehensively, fairly and efficiently with such problems, since the Court is already familiar with the parties, the agreement and the order.

Subsection (5) merely recognises the intent of the parties and passes title at the appropriate time. Subsection (6) gives the Court necessary flexibility to deal with new situations arising after the making of an order.

Section 12 deals with the situation where a hire-purchase or a conditional sale agreement is concluded between a finance company and a hirer or buyer via a dealer or salesman. Because of this practice, it may happen that a finance company is engaged in litigation with a hirer or buyer because of misrepresentations or breaches of terms relating to the conditions of sale. This section renders inapplicable any court decisions to the effect that the dealer or salesman is not the agent of the finance company. Subsection (1) makes it impossible for the parties to avoid this provision. Subsection (3) defines "representations".

REPRESENTATIONS AND TERMS

Section 13 simplifies the law relating to what traditionally have been called "conditions" and "warranties". A "condition" is a stipulation which is fundamental to a contract and the breach of a "condition" gives the aggrieved party the right to treat the contract as at an end. A "warranty" is a provision which is subsidiary to the main purpose of the contract and a breach of which merely gives the aggrieved party a right to damages. These terms, which have caused confusion, are not used in the Decree. Instead, what have previously been called "warranties" and "conditions" are brought under one heading, "terms". The effect of a breach of various terms is set out in sections 13 (3), 14 (6) and 15 (4).

Section 13 implies terms of quiet possession, freedom from charge or encumbrance, and that the owner or seller will have the right to sell the goods when the property is to pass. Subsection (2) relates to situations where a term is implied that the goods will be reasonably fit for a particular purpose.

Section 14 deals with implied terms as to merchantability. The law has been framed to protect the unwitting buyer or hirer. Subsection (4) allows goods to be sold subject to defects specified in the agreement when the agreement expressly excludes the term and the provision is brought to the notice and made clear to the hirer or buyer. By subsection (6), a breach of an implied term will give a right to rescind the agreement.

Section 15 (1) implies the term that in the sales by sample, the bulk will correspond exactly with the sample, and that hirer or buyer has a reasonable opportunity of making a comparison. Subsection (2) implies the term that in sales by description the goods will correspond exactly with the description. As such, the present law is re-enacted. Subsection (3) further implies the term that in sales by description and sample, the bulk will correspond to both. Subsection (4) specifies the effect of a breach of a term implied by this section.

MISCELLANEOUS

Section 16 deals with the situation where a hirer transfers goods held under a hire-purchase or conditional sale agreement to a third party. Subsection (1) gives the third party the right to recover and/or retain possession of the goods if two circumstances exist: (1) if the transfer has been made and is effective because of this section; (2) if the hirer or buyer has defaulted so as to give the owner or seller a right to recover. Subsection (2) gives the third party a right to retain the goods under the original hire-purchase or conditional sale agreement, i.e. effects a novation, if within 60 days he pays or tenders all amounts due under the original agreement or the total due under any three instalments due and unpaid. Subsection (3) specifies that the hirer or buyer is an indemnitor of the third party on all sums paid under subsection (2). Subsection (5) sets out the liabilities and powers that are unaffected by this section.

Subsection (6) defines the sixty-day period. It is desirable that the third party be in possession of the goods for the full sixty days so that the goods may be used to earn the money to effect the novation.

Section 16 applies notwithstanding anything in the original agreement regarding transfers to third parties. Even if the agreement forbids such transfers, they can still be affected under this section. Of course, the seller or owner may still have a cause of action against the hirer or buyer. Section 16 operates no matter how much has been paid on the original agreement, i.e. whether the goods are protected or not. It is also effective no matter how much the third party has paid on the goods to the hirer or buyer. Finally, if the arrears specified in subsection (2) are tendered or paid, the novation is effective and the third party replaces the hirer or buyer under the agreement; the owner or seller has no choice in the matter. The question of whether the transfer from the hirer or buyer to the third party should be in writing is dealt with by section 7 of the Contracts Act, 1960 (Act 25). Finally, subsection (7) makes it clear that this section applies to all transfers as defined.

Section 17 prevents the owner or seller from enforcing certain provisions of the agreement, although the hirer or buyer has failed to carry out an obligation under the agreement, unless enumerated conditions exist. This section is designed to give the buyer notice and a period in which he may make up for his failure, as for example when a payment is delayed due to the breakdown of a motor vehicle enforcement of any provision of the agreement for payment of damages, or forfeiture or forfeiture penalty, or for acceleration of the payment of an instalment, or for termination of the agreement, or for repossession, unless the requisite demand is made and the 14-day period has expired.

Section 18 sets out the duty of a hirer or buyer to inform the owner or seller where the goods are when the hirer or buyer is in possession or control of the goods. Given the owner's or seller's interest in the goods, it is reasonable to expect this of the hirer or buyer. Subsection (2) seeks to ensure that the hirer or buyer will comply with this section.

Section 19 deals with removal of goods let under a hire-purchase agreement or sold under a conditional sale agreement. The purpose of the section is to ensure that the owner or seller will not be fraudulently deprived of his interest and to give the owner or seller the right to stipulate that the goods will not be removed from Ghana without permission. Subsections (2) to (5) are designed to protect the owner or seller where the intent of the hirer or buyer as indicated exists. Obviously, removal of the goods from Ghana where no such intent is present should be treated as any other breach of the agreement. Subsection (2) makes clear, however, that it is the responsibility of the hirer or buyer to satisfy the Court that he did not remove the goods with such intent. Subsection (6) makes provision for the discharge of the attachment order.

Section 20 substantially reproduces section 73 of the Sale of Goods Act, 1962 (Act 137).

Section 21 is designed to ensure that the provisions relating to protected goods will be effective where, for one reason or another, more than one agreement is made in relation to the same goods. The section makes it clear that sections 8 to 11 of this Decree have effect from the time when one half of the hire-purchase price or total purchase price stated in the first agreement has been paid or tendered. Even in circumstances where the first agreement is no longer effective, after a further agreement or agreements have been made, the amount used to determine when goods are protected goods is one half of the hire-purchase price or total purchase price set out in the first agreement. This section seeks to prevent parties from avoiding the provisions of the Decree by the execution of subsequent agreements.

Section 22 substantially re-enacts section 74 of the Sale of Goods Act, 1962 (Act 137). As such, it is designed to give the Commissioner for Trade the power to vary certain sections of this Decree or make supplemental provisions by legislative instrument. It provides flexibility for the fair administration of the Decree.

Section 23 substantially reproduces section 76 of the Sale of Goods Act, 1962 (Act 137). As such it allows the parties to vary their rights, duties, and liabilities. Such variations, of course, are subject to the provisions of the Decree.

Section 24 provides for interpretation.

Section 25 (1) applies the Decree to every conditional sale and hire-purchase agreement. It is desirable that the protections of the Decree should be applied to all such transactions in the interests of uniformity and fairness. There is no good reason for limiting the application of the Decree according to the costs of the goods. The reason traditionally given for imposing such a limit is that certain transactions require more flexibility than the enactment allows and that the parties to such agreements have nearly equal bargaining power. In Ghana, however, it is not so clear that the parties using these credit facilities will be in so strong a bargaining position. Fairness demands that the minimum requirements of the Decree be satisfied in all agreements.

Section 25 (2) provides that the Decree shall bind the Republic.

Section 26 applies the Decree prospectively. It is to apply to all hire-purchase and conditional sale agreements made after the Decree comes into operation.

Section 27 provides that the Decree shall come into force on 1st November, 1974.
