

### HIRE-PURCHASE (RECOVERY OF POSSESSION AND MAINTENANCE OF RECORDS BY OWNERS) REGULATIONS 1976

Parliament's avowed purpose behind the passing of the Hire Purchase (Amendment) Act<sup>1</sup> was to consolidate the protection which the principal Act, the Hire Purchase Act 1967 had provided to hirers against the harsh and unconscionable practices of some unscrupulous owners and their agents. To enforce the protective provisions of the two statutes, the amending Act created the post of Controller of Hire Purchase,<sup>2</sup> a government officer to be appointed by the Minister of Trade and Industry.<sup>3</sup> In the sensitive area of repossession the amending Act restricted the random use of this frequently abused privilege by providing that the right is not to be exercised until there are at least two successive defaults of payment or a default in respect of the last payment.<sup>4</sup> In addition owners and their agents had to comply with any regulations governing repossession which the Minister of Trade and Industry was empowered to make.<sup>5</sup> These eagerly awaited regulations have now been gazetted<sup>6</sup> as the Hire-Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 and will certainly provide a powerful and effective safeguard to hirers in one of the most abused areas of hire-purchase practice.

Rule 1 provides the citation for the Regulations. Rule 2 deals with the protection already given by the amending Act by providing that a owner shall not serve a notice of repossession (in the form set out in the Fourth Schedule) in pursuance of section 15 of the principal Act unless there has been two defaults of payment of instalments or a default in respect of the last payment. Its effect appears to be that if the specified defaults have not taken place a mere service of the Fourth Schedule notice is enough to bring about a breach of the rule and make an owner liable for prosecution. Rule 9 makes a breach of any of the rules prescribed by the Regulations "an offence against the Act". Under s.45 of the Hire Purchase Act 1967 an offence against the Act carries a term of imprisonment not exceeding

<sup>1</sup>Noted in [1975] J.M.C.L. 350-354 (P. Balan).

<sup>2</sup>See s.4 of the amendment Act, which forms S.2A of the principal Act

<sup>3</sup>The appointment was filled on 1st December 1976, vide P.U. (B) 6

<sup>4</sup>See s.5 of the amendment Act

<sup>5</sup>*Ibid.*, S. 12

<sup>6</sup>Federal Gazette, 6th January 1977

six months or a fine not exceeding three thousand dollars or both. If the specified defaults in rule 2 have not taken place an owner who serves a Fourth Schedule notice on a hirer does so at his own peril for he appears to commit an offence even though he refrains from executing his notice by actual retaking of possession. Strangely, a breach of s.15 of the *principal Act*, which deals with some of the formalities to be followed by an owner who intends to repossess, for example, the giving of twenty-one days notice, is not sanctioned by any criminal penalty. This unfortunate situation is the result of an oversight by the draftsman of the principal Act. The principal Act is based on the New South Wales Hire Purchase Act 1960 - 1965 but it does not include s.50(1) of the Australian legislation which reads as follows:

"Any person who contravenes or fails to comply with any provision in this Act is guilty of an offence against this Act."

This omission has the undesirable result that an owner may breach some of the provisions of the Act without incurring any criminal liability.<sup>7</sup> Its inclusion would have further strengthened the protective armour which Parliament has given to hirers.

Under s.15 of the principal Act an owner shall not exercise any power of taking possession unless he serves the Fourth Schedule notice which is in the following prescribed form:

FOURTH SCHEDULE  
Hire-Purchase Act, 1967  
(Section 15)

NOTICE OF INTENTION TO RE-POSSESS

Take notice that . . . . ., the owner of . . . . .  
. . . . . hired by you under an agreement date the  
. . . . . 19 . . . . ., 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 \$ . . . . . are paid to  
. . . . . at . . . . . on or before . . . . .  
19 . . . . .

Total amount payable

Amount paid or provided by hirer to

Arrears under agreement to . . . . . /19 . . . . . \$ . . . . .

<sup>7</sup>See also S. 3(1) of the principal Act discussed infra

The notice makes it quite clear that the owner intends to retake possession unless the hirer makes amends by paying the sums due from him. Rule 3 of the new Regulations now provides as follows:

"3(1) An owner shall in addition to the notice in the form set out in the Fourth Schedule of the Act send to the hirer to the controller, with a copy of notice informing the hirer that the owner intends to take possession of the goods comprised in the hire-purchase agreement.

3(2) Such notice as aforesaid shall be sent by registered post."

This means that a mere service of a duly completed Fourth Schedule is no longer enough as was the case previously. In addition to the Fourth Schedule notice an owner has to send to the hirer a notice informing him that he (the owner) intends to repossess the goods comprised in the hire-purchase agreement. It may be asked why such a tautologous notice is required when the intention to repossess is expressly stated in the Fourth Schedule notice. Again at what point of time is the additional notice required to be sent? Has it to be sent together with the Fourth Schedule notice or when the time-limit of fourteen days as provided by that notice expires? There appears to be no clue from the words of the rule. Owners must also take note that a copy of the second notice must be sent to the Controller by registered post. It appears that there is no duty to send a copy of the Fourth Schedule notice. Finally it may be pointed out the marginal note to Rule 3 which reads, "Notice to owner" is clearly an error and should perhaps read, "Notice to hirer".

Under Rule 4 an owner is required to give the hirer "the name and address of the company, form, body or organisation to which he belongs" A servant or agent of the owner retaking possession is required to show the hirer an authority card issued by the owner (Rule 4(2)). The details to which this authority card should conform is set out in Rule 5. In addition to all these, under a vaguely drafted Rule 6 owners, servants and their agents are required to show their identity cards "to the hirer or any of the occupants of hirer's premises."

Rule 7 and 8 deal with the maintenance of records. Rule 7 provides that every owner shall in respect of every hire-purchase agreement maintain and keep "full and true" records of -

- (a) the date of commencement of the hire-purchase agreement and the date on which the agreement is signed
- (b) the reference number of the hire-purchase agreement
- (c) a description of the goods comprised in the hire-purchase agreement
- (d) the cash price of the goods
- (e) the amount paid or provided by way of deposit
- (f) the amount of each monthly instalment paid by the hirer and
- (g) a copy of each receipt issued by the owner in respect of any instalment paid which receipt shall contain particulars of the amount

of money received from the hirer and the date on which the receipt is issued

Some of these particulars would be obtainable from either the Second Schedule summary or from a copy of the hire-purchase agreement.<sup>8</sup> As it is not infrequent when neither of these documents (particularly the Second Schedule summary) are given to hirers the duty imposed by Rule 7 is a valuable new development.

Under Rule 8 owners are required to keep "full and true records written up to date of the names and addresses" of their servants or agents who are to be charged with the responsibility of taking repossession.

Professor A.L. Diamond wrote of the anonymous county court judge who said that a major part of his time on the bench was taken up with hirers —

"Who are persuaded by persons whom they do not know to enter into contracts that they do not understand to purchase goods that they do not want with money that they have not got."<sup>9</sup>

Malaysia does not appear to lack such indiscreet hirers. In a press statement in the *New Straits Times* of 5th May the Controller of Hire Purchase said that his office received an average of one hundred and fifty repossession notices daily. Thanks to the intervention of the legislature and the Ministry of Trade and Industry, the Hire Purchase (Amendment) Act 1976 and the new Regulations have severely curtailed some of the freedom vigorously abused by some finance companies, their dealers and their agents.

However it is noted with regret that the protection of the two Acts and the new Regulations is still confined to the goods listed in the First Schedule. Hirers of goods outside the Schedule remain liable to owner's abuses beyond the purview of the general law of contract. The use without exception of standard form printed contracts containing terms highly favourable to the owner, the unequal bargaining position of the parties, the inadequacies of general contract law make it most desirable that the protection of the statutes should be extended to all categories of goods. Again the failure to include in our Hire-Purchase Act 1967 a section similar to S. 50(1) of the New South Wales Hire-Purchase Act 1960-1965 appears to have rendered a few of the principal Act's provisions nugatory, except perhaps for the remedy of damages for breach of statutory duty if

<sup>8</sup> See S. 3(1) and 3(2) of the principal Act. See also the form of the Second Schedule in the principal Act. It may be noted the Act provides neither a penal sanction nor civil liability for breach of S. 3(1) (see *infra*) but breach of S. 3(2) is an offence under the Act (see S. 45)

<sup>9</sup> Diamond, A.L., *Introduction to Hire-Purchase Law* [1971] 2nd Edition p. 91

the elements of that tort can be established. For example under S. 3(1) of the principal Act before a hire-purchase agreement is entered into the owner is required to give to the prospective hirer a written statement duly completed in accordance with the form set out in the Second Schedule. What is the position if the owner does not give the hirer such a statement or gives a statement not in accordance with the Second Schedule? The Act provides neither a penal sanction nor a civil remedy.

Compulsory registration of all hire-purchase agreements may be another useful step to protect ignorant hirers. The Sarawak Hire-purchase Registration Ordinance<sup>10</sup> provides that an instrument of hire-purchase shall not be valid unless it is registered in the manner prescribed by the Ordinance. The Registrar of the Supreme Court and the District Officer of each district (except in Kuching) are Registrars for this purpose.<sup>12</sup> The Ordinance provides inter alia that the Registrar may refuse to register any document if (a) he is not satisfied that the document gives effect to a transaction made in good faith between all the parties, (b) he is not satisfied that each party fully understands its purport and effect or (c) he has any reason to believe that the document is intended to deceive or mislead.<sup>13</sup> This note will end by suggesting that we should consider emulating Sarawak and enacting similar provisions in our statutory law to provide for the compulsory registration of all hire-purchase agreements with the Controller of Hire-Purchase.

P. Balan

<sup>10</sup> Cap 71 of the Laws of Sarawak.

<sup>11</sup> *Ibid.*, S. 4

<sup>12</sup> *Ibid.*, S. 3

<sup>13</sup> *Ibid.*, S. 7(2)

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**EMERGENCY (ESSENTIAL POWERS) ORDINANCES 1969 -- 1971. \***

Ord. No.	Subject	PU (A)	Remarks
1.	Essential Powers	146/69	Remains in force
2.	National Operations Council	149/69	Repealed by PU (A) 62/71
3.	Constitutional (Amendment) and Financial Provisions	170/69	Repealed by PU (A) 64/71
4.	Internal Security (Modification)	186/69	Repealed and re-enacted as Act A 61
5.	Public Order and Prevention of Crime	187/69	Remains in force
6.	Written Laws and Subsidiary Legislation	219/69	Repealed by PU (A) 63/71
7.	Territorial Waters	307A/69	Remains in force
8.	State Laws	307B/69	Repealed by PU (A) 63/71
9.	Bills of Exchange (Modification)	431/69	Repealed and re-enacted as Act A 41
10.	Continental Shelf and Petroleum Mining (Modification)	467/69	Spent. Amendments incorporated in principal laws
11.	Territorial Waters (Amendment)	468/69	Amendment to Ordinance 7, above.
12.	Protected Banks	474/69	Repealed by Act 102
13.	Public Order and Prevention of Crime (Amendment)	500/69	Amendment to Ordinance 5, above
14.	Courts and Criminal Procedure	521/69	Repealed and re-enacted as Act A 33
15.	Road Traffic (Amendment)	522/69	Repealed and re-enacted as Act A 52
16.	Civil Lists (Amendment)	4/70	Repealed and re-enacted as Act A 34
17.	Financial Procedure (Amendment)	9/70	Repealed and re-enacted as Act A 39
18.	Judges Remuneration (Amendment)	12/70	Spent Principal law new repealed.

\*After the dissolution of Parliament on 20.3.1969 and with the Proclamation of Emergency on 15th May, 1969, ninety-two Emergency Ordinances were promulgated under Article 150(2) of the Federal Constitution before Parliament was re-convened on 20th February, 1971.

The subject matter of these Emergency Ordinances and their position as at 10th July 1977 are as in the list below.

We are extremely grateful to Mr. S. Sivasamy of the Attorney-General's Chambers for providing us with this list.