The Official Gazette

(EXTRAORDINARY)

OF GUYANA

Published by the Authority of the Government

GEORGETOWN, MONDAY 12TH DECEMBER, 2022

TABLE OF CONTENTS **PAGE**

FIRST SUPPLEMENT

LEGAL SUPPLEMENT

A. **ACTS —** Act No. 23 of 2022 – The Hire-Purchase Act 2022 … … 397

B. **SUBSIDIARY LEGISLATION — NIL**

C. **BILLS — NIL**

GEORGETOWN, Demerara – Printed and Published every Saturday and on such Extraordinary Days as may be directed by the Government by Guyana National Printers Limited, 1 Public Road, La Penitence, Greater Georgetown.

MONDAY 12TH DECEMBER, 2022

THE OFFICIAL GAZETTE 12TH DECEMBER, 2022
LEGAL SUPPLEMENT — A

GUYANA

ACT No. 23 of 2022

HIRE-PURCHASE ACT 2022

I assent.

Mohamed Irfaan Ali,
President.
12th December, 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I
PRELIMINARY

1. Short title.
2. Interpretation.

PART II

HIRE-PURCHASE, CREDIT SALE AND CONDITIONAL SALE AGREEMENTS

3. Requirements relating to hire-purchase agreements.
4. Requirements relating to credit sale and conditional sale agreements.
5. Right of hirer or buyer to determine hire-purchase or conditional sale agreement.
6. Avoidance of certain provisions in agreements.
7. Duty of owner and seller to supply documents and information.
8. Duty of hirer or buyer to give information as to location of goods.
9. Conditions and warranties to be implied in agreements.
10. Notice of cancellation.
11. Service of notice of cancellation.
12. Re-delivery and interim care of goods comprised in notice of cancellation.
13. Further consequences of notice of cancellation.
14. Appropriation of payments.
15. Registration of motor vehicle to be annotated.

PART III

REGISTRATION

16. Application.
17. Registration.
18. Effect of registration and search of Register.
19. Electronic register in the Commercial Registry.
20. Registration of a notice of agreement.
21. Confirmation statement.

PART IV

RECOVERY OF POSSESSION AND OTHER REMEDIES

22. Action to recover possession of goods.
23. Owner or seller may recover goods by action where seventy percent of price paid.
24. Powers of court in action to recover possession of goods.
25. Effect of postponement of operation of an order for specific delivery of goods.
26. Successive hire-purchase agreements or conditional sale agreements.

27. Provisions as to insolvency.

28. Rebate on early payment, etc.

29. Notice of default when less than seventy percent of price paid.

30. Obstruction.

31. Installation charges.

32. Jurisdiction of the magistrate's court.

33. Responsibility of owner or seller to insure goods.

PART V

MISCELLANEOUS

34. Application of Act in relation to existing agreements.

35. Regulations.

SCHEDULE

An Act to make provision for the regulation of hire-purchase, credit sale and conditional sale agreements, and for related purposes.

A.D. 2022 Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Hire-Purchase Act 2022.

Interpretation.

2. (1) In this Act –

"action" includes counter-claim and set-off;

"agreement" includes a hire-purchase agreement, credit sale agreement or conditional sale agreement;

"buyer" means a person who buys or agrees to buy goods;

"conditional sale agreement" means a contract for the sale of goods under which –

(a) the purchase price or a part of it is payable by instalments; and

(b) the property in the goods is to remain in the seller, notwithstanding that the buyer is in possession of the goods until conditions specified in the contract, such as the payment of instalments, are fulfilled;

"contract of guarantee" means, in relation to any hire-purchase agreement, credit sale agreement or conditional sale agreement, a contract, made at the request of the hirer or buyer –

(a) to guarantee the performance of the hirer's or buyer's obligations under the agreement; or

(b) to indemnify the owner or seller against any loss which he may incur in respect of that agreement,

and the expression "guarantor" shall be construed accordingly;

"credit sale agreement" means an agreement for the sale of goods, where the property in the goods passes to the buyer upon the signing of the agreement and the payment of the first instalment, and under which the purchase price or a part of it is payable by instalments;

"delivery" means voluntary transfer of possession from one person to another;

"goods" includes all movables except money, and includes growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale;

"hire-purchase agreement" means an agreement under which –

(a) goods are hired in return for payments by instalments by the person to whom they are hired; and

(b) the property in the goods will pass to that person if the terms of the agreement are complied with and that person exercises an option to purchase the goods;

"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 –

(a) exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement; and

(b) includes any sum –

(i) payable by the hirer by way of a deposit or other initial payment; or

(ii) credited or to be credited to the hirer on account of a deposit or other initial payment,

whether that sum is to be or has been paid to the owner or to any other 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;

"hirer" means the person who takes 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 the Minister with responsibility for commerce and business;

"owner" means the person who proposes to let or lets goods to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law;

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

"Registrar" means the Registrar of the Commercial Registry appointed under section 16 of the Deeds and Commercial Registries Authority Act 2013;

No. 4 of 2013

"sale" includes a bargain and sale as well as a sale and delivery;

"second-hand goods" means goods that are not new; but are refurbished, reconditioned, used or previously owned;

"seller", in relation to a credit sale agreement or a conditional sale agreement, means the person who agrees to sell goods under the agreement and includes any 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 has passed by assignment or by operation of law;

"total purchase price" means the total sum payable by the buyer under a credit sale agreement or a conditional sale agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement; and

"warranty" means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of that contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) Where an owner or seller has agreed that any part of the hire-purchase price or total purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of sections 5 and 7, be deemed to be a payment of that part of the hire-purchase price or total purchase price.

(3) 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 therein 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 agreement was made.

PART II

HIRE-PURCHASE, CREDIT SALE AND CONDITIONAL SALE AGREEMENTS

Requirements relating to hire-purchase agreements.

3. (1) Before any hire-purchase agreement is entered into in respect of any goods, the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by the hirer for cash, in this section referred to as the "cash price".

(2) Subsection (1) shall be deemed to have been complied with –

(a) if the hirer has inspected the goods or like goods and at the time of his inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles which comprised the goods; or

(b) if the hirer has selected the goods by reference to a catalogue, price list or advertisement which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles which comprised the goods.

(3) The owner shall make a note or memorandum of the agreement, containing the requirements specified in subsection (4), which shall be signed by the hirer and by or on behalf of all other parties to the agreement, and the owner shall deliver or send a copy of it to the hirer by registered

post at his address as contained in the agreement within seven days of the making of the hire-purchase agreement.

(4) The note or memorandum of the agreement referred to in subsection (3) shall contain –

(a) a statement of –

(i) the hire-purchase price and of the cash price of the goods to which the agreement relates;

(ii) the amount of each of the instalments by which the hire-purchase price shall be paid; and

(iii) the date, or the mode of determining the date, upon which each instalment is payable;

(b) a list of the goods to which the agreement relates sufficient to identify them; and

Part I Schedule

(c) a notice, which is at least as prominent as the rest of the contents of the note or memorandum, in the terms prescribed in Part I of the Schedule.

(5) An owner shall not be entitled to enforce a hire-purchase agreement or any contract of guarantee relating to the agreement or any right to recover the goods from the hirer, and no security given by the hirer in respect of money payable under the hire-purchase agreement or given by a guarantor in respect of money payable under a contract of guarantee shall be enforceable against the hirer or guarantor by any holder of the security, unless the requirements specified in subsection (1) or (2), and subsections (3) and (4) have been complied with.

(6) If the court is satisfied in any action that a failure to comply with any requirement specified in subsection (1), (2), (3) or (4) has not prejudiced the hirer, and that it would be just and equitable to dispense with

the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

Requirements relating to credit sale and conditional sale agreements.

4. (1) Before making any credit sale or conditional sale agreement, the seller shall state in writing to the prospective buyer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by the buyer for cash, in this section referred to as the "cash price".

(2) Subsection (1) shall be deemed to have been complied with -

(a) if the buyer has inspected the goods or like goods and at the time of his inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles which comprised the goods; or

(b) if the buyer has selected the goods by reference to a catalogue, price list or advertisement which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles which comprised the goods.

(3) The seller shall make a note or memorandum of the agreement, containing the requirements specified in subsection (4), which shall be signed by the buyer and by or on behalf of all other parties to the agreement, and the seller shall deliver or send a copy of the note or memorandum to the buyer by registered post at his address as contained in the agreement within seven days of the making of the agreement.

(4) The note or memorandum of the agreement referred to in subsection (3) shall contain –

(a) a statement of –

(i) the total purchase price and of the cash price of the goods to which the agreement relates;

(ii) the amount of each of the instalments by which the total purchase price shall be paid; and

(iii) the date, or the mode of determining the date, upon which each instalment is payable;

(b) a list of the goods to which the agreement relates sufficient to identify them; and

(c) with respect to a conditional sale agreement, a notice which is at least as prominent as the rest of the contents of the note or memorandum, in the terms prescribed in Part II of the Schedule.

Part II Schedule

(5) A person who has sold goods by a credit sale agreement or conditional sale agreement shall not be entitled to enforce the agreement or any contract of guarantee relating to the agreement, or in the case of a conditional sale agreement, any right to recover the goods from the buyer, and no security given by the buyer in respect of money payable under the credit sale agreement or conditional sale agreement or given by a guarantor in respect of money payable under a contract of guarantee shall be enforceable against the buyer or guarantor by any holder of the security, unless the requirements specified in subsection (1) or (2), and subsections (3) and (4) have been complied with.

(6) If the court is satisfied in any action that a failure to comply with any requirement specified in subsection (1), (2), (3) or (4) has not prejudiced the buyer, and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purposes of the action.

Right of hirer or buyer to determine hire-purchase or conditional sale agreement.

5. (1) At any time before the final payment under a hire-purchase agreement or a conditional sale agreement falls due, a hirer or buyer may determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the sums payable under the

agreement, and at the same time or prior to giving the notice shall deliver the goods to the owner or seller:

Provided that, in the case of a conditional sale agreement, where the property in the goods, having become vested in the buyer is subsequently transferred to a person who does not become the buyer under the agreement, the buyer shall not after the transfer be entitled to terminate the agreement.

(2) Where the hirer or buyer determines a hire-purchase agreement or conditional sale agreement, he is liable, without prejudice to any liability which has accrued before the determination, to pay the amount, if any, due in respect of the hire-purchase price or total purchase price immediately before the termination, or such less amount as may be specified in the agreement.

(3) If a hirer or buyer gives notice of termination of a hire-purchase agreement or a conditional sale agreement without delivering the goods the notice shall be of no effect and the hire-purchase agreement or the conditional sale agreement shall remain in full force.

(4) Where a hire-purchase agreement or a conditional sale agreement has been determined, the hirer or buyer, if he has failed to take reasonable care of the goods, is liable to pay damages for that failure.

(5) Nothing in this section shall prejudice any right of a hirer or buyer to determine a hire-purchase agreement or a conditional sale agreement by any other way than the way provided in this section.

Avoidance of certain provisions in agreements.

6. Any provision in any agreement is void where –

(a) an owner, seller or any person acting on his behalf, is authorised to enter forcibly upon any 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 any such forcible entry;

(b) the right conferred on a hirer or buyer by this Act to determine the hire-purchase agreement or conditional sale agreement is excluded or restricted, or where any liability in addition to the liability imposed by this Act is imposed on a hirer or buyer by reason of such termination;

(c) the right conferred on a hirer or buyer by this Act to remedy the breach of a hire-purchase agreement or a conditional sale agreement in accordance with this Act is excluded or restricted or where any liability in addition to any liability imposed by this Act is imposed on a hirer or buyer by reason of the continuation of the hire-purchase agreement or a conditional sale agreement under this Act;

(d) a hirer or buyer, after the determination of the hire-purchase agreement or conditional sale agreement, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act;

(e) any person acting on behalf of an owner or seller in connection with the formation or conclusion of a hire-purchase agreement, credit sale agreement or conditional sale agreement is treated as or deemed to be the agent of the hirer or the buyer; or

(f) an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase agreement, credit sale agreement or conditional sale agreement.

Duty of owner and seller to supply documents and information.

7. (1) At any time before the final payment has been made under a hire-purchase agreement, credit sale agreement or conditional sale agreement, any person entitled to enforce the agreement against the hirer or buyer or entitled to enforce the contract of guarantee against the guarantor shall, within fourteen days after he has received a request in writing from the hirer, buyer or guarantor and the hirer, buyer or guarantor has tendered to him the requisite sum for expenses, supply to the hirer, buyer or guarantor –

(a) a copy of any memorandum or note of the agreement; and

(b) a statement signed by the said person or his agent showing –

(i) the amount paid by or on behalf of the hirer or buyer;

(ii) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each unpaid instalment; and

(iii) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each future instalment.

(2) The request in writing required by subsection (1) shall contain an address to which the copy of the memorandum or note of the agreement and the statement are to be sent and a person entitled to enforce the agreement against the hirer or buyer or entitled to enforce the contract of guarantee against the guarantor shall be deemed to have complied with the provisions of subsection (1) if, within the said fourteen days, he delivers the copy of the memorandum or note of the agreement and the statement, or sends the same by registered post, to the hirer, buyer or guarantor at the said address.

(3) If the request does not contain an address as required by subsection (2), then a person entitled to enforce the agreement against the hirer or buyer or entitled to enforce the contract of guarantee against the guarantor shall be deemed to have complied with the provisions of subsection (1) if, within the said fourteen days, he delivers the copy of the memorandum or note of the agreement and the statement, or sends the same by registered post, to the hirer, buyer or guarantor at his address given in the hire-purchase agreement, credit sale agreement or conditional sale agreement.

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

(a) no person shall be entitled to enforce the agreement against the hirer or buyer or to enforce any contract of guarantee against the guarantor relating to the agreement, and, in the case of a hire-purchase agreement or a conditional sale agreement, the owner or seller shall not be entitled to enforce any right to recover the goods from the hirer or buyer; and

(b) no 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 such a contract of guarantee shall be enforceable against the hirer or buyer or the guarantor by any holder of the security,

and, if the default continues for a period of one month, the defaulter commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.

Duty of hirer or buyer to give information as to location of goods.

8. (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 his possession or control –

(a) 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 it is sent by post, at the time of posting; and

(b) the hirer or buyer shall, if he removes the goods from the address stated in the agreement to another address or from the last address given to the owner or seller to another address, inform the owner or seller of the new address inclusive of directions to the new address.

(2) If a hirer or buyer –

(a) fails without reasonable cause to give the information required to be given by subsection (1) within twenty-one days of the receipt of the request or the removal of the goods; or

(b) gives any information for the purposes of subsection (1) which he knows or has reasonable cause to believe is false,

he commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.

Conditions and warranties to be implied in agreements.

9. (1) In every hire-purchase agreement and in every conditional sale agreement there shall be –

(a) an implied warranty that the hirer or buyer shall have and enjoy quiet possession of the goods;

(b) an implied condition on the part of the owner or seller 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; and

(d) an implied condition that the goods shall be of merchantable quality, except where the goods are let or sold as second-hand goods and the note or memorandum of the agreement made in pursuance of section 3(3) or 4(3) contains a statement to that effect prominently placed and separately signed by the hirer or buyer.

(2) The condition that the goods shall be of merchantable quality shall not be implied by virtue of subsection (1)(d) –

(a) as regards defects of which the owner or seller could not reasonably have been aware at the time when the agreement was made; or

(b) if the hirer or buyer has examined the goods or a sample, as regards defects which the examination ought to have revealed.

(3) Where the hirer or buyer expressly or by implication makes known to the owner or seller the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(4) The warranties and conditions set out in subsection (1) shall be implied notwithstanding any agreement to the contrary.

(5) The owner or seller shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection (3) unless he proves that before the agreement was made the provision was brought to the notice of the hirer or buyer and its effect made clear to him.

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

Notice of cancellation.

10. (1) Before the end of the period of seven days beginning with the day on which a hirer or buyer signs a document which constitutes a hire-purchase agreement, credit sale agreement or conditional sale agreement, the hirer or buyer may serve a notice of cancellation upon –

(a) the owner or seller; or

(b) any person who is the agent of the owner or seller for the purpose of receiving such a notice.

(2) A notice of cancellation shall have effect if, however expressed, it indicates the intention of the hirer or buyer to withdraw from the transaction to which the agreement relates.

(3) Where a hirer or buyer serves a notice of cancellation then –

(a) if at the time when the notice is served, the document constitutes a hire-purchase agreement, credit sale agreement or conditional sale agreement, the service of the notice shall operate so as to terminate it; and

(b) in any case not falling under subparagraph (a), the service of the notice shall operate as a withdrawal of any offer to enter into an agreement contained in or implied by the document and as notice to the owner or seller that such offer is withdrawn.

(4) The note or memorandum of the agreement must contain a full and sufficient statement as to the rights of the hirer or buyer under this section, and the statement must specify the name and address of a person to whom the notice of cancellation may be sent, including an electronic address (if any).

Service of notice of cancellation.

11. (1) For the purposes of section 10, a notice of cancellation –

(a) shall be deemed to be served on the owner or seller if it is sent by registered post addressed to a person specified in the agreement as being a person to whom the notice may be sent and is addressed to that person at an address so specified; and

(b) if so posted and addressed, shall be deemed to be served on the owner or seller at the time when it is posted.

(2) The provisions of subsection (1) shall be without prejudice to the service of a notice of cancellation by any other lawful method provided by any written law including by electronic means upon the owner or seller or his agent.

(3) Any person who conducted any antecedent negotiations, but is not the owner or seller, shall be deemed to be the agent of the owner or seller for the purpose of receiving any notice of cancellation of the hirer or buyer.

Re-delivery and interim care of goods comprised in notice of cancellation.

12. (1) A hirer or buyer shall at the same time of the giving of the notice of cancellation or prior to the giving of the notice deliver the goods to which the agreement relates in his possession to the owner or seller at his own cost, subject to any lien, or other right to retain the goods, which he may have under section 13(2).

(2) If a hirer or buyer gives notice of cancellation of a hire-purchase agreement, credit sale agreement or conditional sale agreement without delivering the goods to which the agreement relates such notice shall be of no effect and the hire-purchase agreement, credit sale agreement or conditional sale agreement shall remain in full force.

(3) On cancelling the agreement, the hirer or buyer is liable to pay the amount, if any, due in respect of the hire-purchase price immediately

before the cancellation, or such less amount as may be specified in the agreement.

(4) The goods delivered by the hirer or buyer to the owner or seller shall be in good working order and condition (fair wear and tear excepted) and in a clean condition.

(5) If the goods are returned in damaged, unclean or defective state except where due to fair wear and tear or an inherent fault in the goods, the hirer shall be liable to pay the owner or seller damages or for the cost of any repair or cleaning required to return the goods to a condition fit for re-hire.

Further consequences of notice of cancellation.

13. (1) A notice of cancellation operates so as to terminate a hire-purchase agreement, a credit sale agreement or a conditional sale agreement.

(2) Upon the service of a notice of cancellation, any sum which –

(a) has been paid by the hirer or buyer in respect of the goods to which the agreement relates, whether paid before or after the agreement was signed; and

(b) is comprised in the hire-purchase price or total purchase price or has, in pursuance of any antecedent negotiations, been paid to or for the benefit of the owner or seller or any other person who conducted those negotiations,

shall, subject to subsection (3), be recoverable by the hirer or buyer from the person to whom it was paid; and if the hirer or buyer is in possession of the goods, he shall have a lien upon them for any sum which he is entitled to recover by virtue of this subsection.

(3) The owner or seller may charge a restocking fee not exceeding ten percent of the purchase price of the goods to which the agreement relate, which fee may be deducted from any sum paid under subsection (2).

Appropriation of payments.

14. (1) A hirer or buyer who is liable to make payments in respect of two or more hire-purchase agreements, two or more credit sale agreements or two or more conditional sale agreements to the same owner or seller 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 appropriate the sum so paid by him –

(a) in or towards the satisfaction of the sum due under any one of the agreements; or

(b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit.

(2) If a hirer or buyer fails to make any such appropriation, the payment shall be appropriated towards the satisfaction of the sums due under the several agreements respectively in the proportions which those sums bear to one another.

Registration of vehicle to be annotated.

15. (1) Where a vehicle being registered is the subject of a hire-purchase agreement or conditional sale agreement, the Revenue Authority shall annotate on the registration that the vehicle is the subject of a hire-purchase agreement or conditional sale agreement.

(2) When the agreement is determined the annotation on the registration shall be cancelled by the Revenue Authority.

(3) The Revenue Authority shall provide a copy of the registration on payment of the requisite fee to any member of the public who may request a copy.

PART III

REGISTRATION

Application.

16. This Part applies to goods with a hire-purchase price or a total purchase price of one hundred thousand dollars or more and that are let under a hire-purchase agreement, or sold under a conditional sale agreement or credit sale agreement.

Registration.

17. The Commercial Registry shall be responsible for the registration of –

(a) a notice of a hire-purchase agreement, a notice of a conditional sale agreement and a notice of a credit sale agreement; and

(b) the notice of cancellation, notice of termination and notice of discharge of the agreements to which the registered goods relate.

Effect of registration and search of register.

18. (1) A notice of agreement that is registered is effective against third parties.

(2) A notice of agreement shall not be effective against third parties until it is searchable in the register.

(3) Any person may search the register and pay the fee specified under section 19(2) for a copy of a registered notice of agreement.

(4) A person may search the register by using the –

(a) the serial number of the goods, if so assigned;

(b) the registration number assigned to the registered notice of agreement; or

(c) the unique identifier of the hirer or buyer, or the owner or seller, if any.

(5) A search in the register may be carried out without assigning any reason for the search.

Electronic Register in the Commercial Registry.

19. (1) The Registrar shall keep and maintain in electronic form a Register of Notices of Agreements in respect of hire-purchase

agreements, conditional sale agreements and credit sale agreements that provides for –

(a) the submission of information in respect of the goods and the agreement to which the goods relate, any contract of guarantee and any contract of warranty in relation to the agreement directly in the Register by electronic means;

(b) the assignment of a registration number to each notice of agreement, notice of cancellation, notice of termination and notice of discharge of the agreements registered under this Part, together with a notation date and time of the submission;

(c) the Register to be searchable; and

(d) any other feature the Registrar thinks necessary.

(2) The Registrar with the approval of the Minister with responsibility for the Commercial Registry shall by notice published in the *Gazette* specify the fees to be charged for the services of the Registry and the manner and form of payment of the fees.

(3) Where for any reason it is not possible to do electronic registration or payment as provided under the subsections (1) and (2), the Registrar may accept paper form of registration, and any other form of payment recognised by law, until electronic registration and payment are possible.

Registration of a notice of agreement.

20. (1) A person may register a notice of agreement in respect of a hire-purchase agreement, conditional sale agreement or credit sale agreement in the Commercial Registry by submitting in the notice of agreement form in the Register the following particulars in respect of the agreement –

(a) if the hirer or buyer is –

(i) an individual, the individual's name and

address;

(ii) a business entity registered under the Business Names (Registration) Act, the entity's registration number, and its name and address; or

Cap. 90:05

(iii) an incorporated business entity, the entity's number assigned to it on its incorporation and the name and address of the corporation;

(b) if the owner or seller is –

(i) an individual, the individual's name and address;

(ii) a business entity registered under the Business Names (Registration) Act, the entity's registration number, and its name and address; or

(iii) an incorporated business entity, the entity's number assigned to it on its incorporation and the name and address of the corporation;

(c) a description of the goods which is the subject of the agreement;

(d) the term for which the agreement shall be effective;

(e) the hire purchase price or the total purchase price, which shall be in accordance with section 16, and how is the hire-purchase price or total purchase price is to be paid;

(f) particulars of any contract of guarantee;

(g) particulars of any contract of warranty; and

(h) any other particular determined by the Registrar, or any unique identifier for the hirer or buyer, or owner or seller as may be prescribed.

(2) A notice of agreement is registered at the time a registration number, date and time are assigned to it in the Register.

(3) A notice of agreement may relate to one or more agreements.

Confirmation statement.

21. (1) On registration, a confirmation statement is automatically and immediately issued by the electronic system or shall be issued by the Registrar, after a notice of agreement has been registered in paper form stating the number, date and time assigned to it in the Register.

(2) A copy of the confirmation statement shall be given to the other party to the agreement by the party who registered a notice of agreement, or on whose behalf a notice of agreement has been registered, within fifteen clear days after the confirmation statement is received, unless the party has waived in writing the right to receive it.

PART IV

RECOVERY OF POSSESSION AND OTHER REMEDIES

Action to recover possession of goods.

22. (1) Where goods have been let under a hire-purchase agreement or have been sold under a conditional sale agreement the owner or seller may –

(a) bring an action to enforce a right to recover possession of the goods from the hirer or buyer; and

(b) prove in that action that, after the right to recover possession of the goods accrued but before the action was begun, he made a request in writing to the hirer or buyer to surrender the goods.

(2) Nothing in this section shall affect a claim for damages for conversion.

Owner or seller may recover goods by action where seventy percent of price paid.

23. (1) Where goods have been let under a hire-purchase agreement or have been sold under a conditional sale agreement and seventy percent or more of the hire-purchase price or total purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer, buyer or any guarantor, the owner or seller shall not enforce any right to recover possession of the goods otherwise than by action.

(2) If an owner or seller recovers possession of goods in contravention of subsection (1), the hire-purchase agreement or conditional sale agreement, if not previously determined, shall determine, and –

(a) the hirer or buyer shall be released from all liability under the agreement and shall be entitled to recover from the owner or seller, in an action for money had and received, all sums paid by the hirer or buyer under the agreement or under any security given by him in respect of the agreement; and

(b) any guarantor shall be entitled to recover from the owner or seller, in an action for money had and received, all sums paid by him under the contract of guarantee or under any security given by him in respect of the contract.

(3) This section shall not apply in any case in which the hirer or buyer has determined the agreement by virtue of any right vested in him.

Powers of court in action to recover possession of goods.

24. (1) Where, in a case to which section 23(1) applies, an owner or seller decides to commence an action to enforce a right to recover possession of goods from a hirer or buyer, the action shall be commenced in the magistrate's court for the magisterial district in which the hire-purchase agreement or conditional sale agreement was entered into.

(2) After an action has commenced the owner or seller shall not take any step to enforce payment of any sum due under the hire-purchase agreement, the conditional sale agreement or under any contract of guarantee relating to the agreement, except by claiming the sum due in the said action.

(3) Subject to any other law, all parties to the agreement and any guarantor shall be made parties to the action.

(4) Pending the hearing of the action the court shall in addition to any other powers, have power upon the application of the owner or seller, to make such orders as the court thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the user of the goods or giving directions as to their custody.

(5) If any person fails to comply with any requirement of an order under subsection (4), the person commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.

(6) On the hearing of the action the court may -

(a) make an order for the specific delivery of all the goods to the owner or seller;

(b) make an order for the specific delivery of all the goods to the owner or seller and postpone the operation of the order on condition that the hirer, buyer or any guarantor pays the

unpaid balance of the hire-purchase price or total purchase price at such times and in such amounts as the court, having regard to the means of the hirer, buyer and of any guarantor, thinks just, and, subject to the fulfilment of such other conditions by the hirer, buyer or a guarantor as the court thinks just;

(c) 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 title to the remainder of the goods; or

(d) make any other order the court thinks just in the circumstances of the case.

(7) No order shall be made under subsection (6)(b) unless the hirer or buyer satisfies the court that the goods are in his possession or control at the time when the order is made.

(8) The court shall not make an order transferring to the hirer or buyer the owner's title or the seller's title to a part of the goods unless it is satisfied that the amount which the hirer or buyer has paid in respect of the hire-purchase price or total purchase price exceeds the price of that part of the goods by at least one-third of the unpaid balance of the hire-purchase price or total purchase price.

(9) If in an action to which this section applies an offer as to conditions for the postponement of the operation of an order under subsection (6)(b) is made by the hirer or buyer and accepted by the owner or seller, an order under subsection (6)(b) may on the acceptance be made by the court in accordance with the offer without hearing evidence as to the matters specified in subsection (6)(b) or in subsection (7); but where a guarantor is a party to the action, no such order shall be made before the date fixed for the hearing of the action.

(10) Where damages have been awarded against the owner or seller in the proceedings, the court may treat the hirer or buyer as having paid in respect of the hire-purchase price or total purchase price, in addition to the actual amount paid, the amount of the damages, or such part of the damages as the court thinks fit, and the damages shall accordingly be remitted either in whole or in part.

(11) In this section the expression –

(a) "order for the specific delivery of the goods to the owner or seller" means an order for delivery of the goods to the owner or seller, without giving the hirer or buyer an option to pay their value; and

(b) "price" in relation to any goods means such part of the hire-purchase price or total purchase price as is assigned to those goods by the note or memorandum of the hire-purchase agreement or conditional sale agreement, or, if no such assignment is made, such part of the hire-purchase price or total purchase price as the court may determine.

(12) If at any time before the hearing of an action to which this section applies the owner or seller has recovered possession of a part of the goods, the references in subsection (6) to all the goods shall be construed as references to all the goods which the owner or seller has not recovered, and, if the parties have not agreed upon an adjustment of the hire-purchase price or total purchase price in respect of the goods so recovered, the court may for the purposes of subsection (6)(b) and (c) make such reduction of the hire-purchase price or total purchase price and of the unpaid balance of the hire-purchase price or total purchase price as the court thinks just.

(13) Where an owner or seller has recovered a part of the goods let under a hire-purchase agreement or sold under a conditional sale agreement, and the recovery was effected in contravention of section 23,

this section shall not apply in relation to any action by the owner to recover the remainder of the goods.

(14) Notwithstanding any other law, a magistrate's court shall have jurisdiction to hear and determine an action referred to in subsection (1), whatever is the hire-purchase price or total purchase price in respect of the goods in question or whatever the sum of money involved.

Effect of postponement of operation of an order for specific delivery of goods.

25. (1) While the operation of an order for the specific delivery of goods to the owner or seller is postponed under section 24, the hirer or buyer shall be deemed to be a bailee of the goods under and on the terms of the hire-purchase agreement or conditional sale agreement:

Provided –

(a) no further sum shall be or become payable by the hirer, buyer or a guarantor on account of the unpaid balance of the hire-purchase price or total purchase price, except in accordance with the terms of the order; and

(b) the court may make such further modification of the terms of the hire-purchase agreement or conditional sale agreement and of any contract of guarantee relating to the agreement as the court considers necessary having regard to the variation of the terms of payment.

(2) If while the operation of an order for the specific delivery of the goods to the owner or seller is so postponed the hirer, buyer or a guarantor fails to comply with any condition of the postponement, or with any term of the agreement as varied by the court, or wrongfully disposes of the goods, the owner or seller shall not take any civil proceedings against the hirer, buyer or guarantor otherwise than by making an application to the court by which the order was made; but in the case of a breach of any condition relating to the payment of the unpaid balance of the hire-purchase price or total purchase price, it shall not be necessary for the owner or seller

to apply to the court for leave to execute the order unless the court has so directed.

(3) When the unpaid balance of the hire-purchase price or total 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.

(4) The court may at any time during the postponement of the operation of such an order as mentioned above –

(a) vary the conditions of the postponement, and make such further modification of the hire-purchase agreement or conditional sale agreement and of any contract of guarantee relating to the agreement as the court considers necessary having regard to the variation of the conditions of the postponement;

(b) revoke the postponement; or

(c) make an order, in accordance with section 24, for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

(5) Where a postponed order for the specific delivery of goods to the owner or seller has been made under section 24(6)(b), the powers of the court under subsection (4)(a) and (c) of this section may be exercised, notwithstanding that any condition of the postponement has not been complied with, at any time before the goods are delivered to the owner or seller in accordance with a warrant issued in pursuance of the order; and where such a warrant has been issued the court shall –

(a) if the court varies the conditions of the postponement under subsection (4)(a), suspend the warrant on the like conditions;

(b) if the court makes an order under subsection (4)(c) for the specific delivery of a part of the goods to the owner and for the transfer to the hirer or buyer of the owner's title to the remaining part thereof, cancel the warrant so far as it provides for the delivery of the last-mentioned part of the goods.

(6) At any time before the delivery of goods to the owner or seller in accordance with a warrant issued under subsection (5), the warrant may, so far as it provides for the delivery of the goods, be discharged by the payment to the owner or seller by the hirer, buyer or any guarantor of the whole of the unpaid balance of the hire-purchase price or the total purchase price; and in any such case the owner's or seller's title to the goods shall vest in the hirer or buyer.

Successive hire-purchase agreements or conditional sale agreements.

26. Where goods have been let under a hire-purchase agreement or sold under a conditional sale agreement and at any time after seventy percent or more of the hire-purchase price or total purchase price has been paid or tendered the owner or seller makes a further hire-purchase agreement or conditional sale agreement with the hirer or buyer comprising those goods, sections 23 and 24 shall have effect in relation to that further agreement as from the commencement of the further agreement.

Provisions as to insolvency.

27. Where, under the powers conferred by this Act, the court has postponed the operation of an order for the specific delivery of goods to any person, the goods shall not, during the postponement, be treated as goods which are by the consent or permission of that person in the possession, order or disposition of the hirer or buyer for the purposes of section 42 of the Insolvency Act.

Cap. 12:21

Rebate on early payment, etc.

28. Notwithstanding anything to the contrary contained in a hire-purchase agreement or a conditional sale agreement –

(a) where the balance of the hire-purchase price or total purchase price payable under the agreement is paid not less than one month prior to the date on which it is due, a rebate in the price of the goods shall be allowed to the hirer or buyer at the rate of five percent per annum or such rate as may be prescribed, calculated on the amount of such balance for the period in respect of which it was prepaid; and

(b) where the balance of the hire-purchase price or total purchase price payable under the agreement remains unpaid for more than one month after the date on which it is due, interest on such balance may be charged by the owner or seller at the rate of five percent per annum or such rate as may be prescribed, calculated on the amount of such balance for the period in respect of which it is due.

Notice of default when less than seventy percent of price paid.

29. (1) Where goods have been let under a hire-purchase agreement or sold under a conditional sale agreement and less than seventy percent of the hire-purchase price or total purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer, buyer or any guarantor, the owner or seller shall not enforce any right to recover possession of the goods unless he has given to the hirer or buyer not less than twenty-one days' notice of his intention to do so.

(2) The requirement of giving notice imposed on an owner or seller by subsection (1) shall not apply unless the only breach in respect of which the owner or seller seeks to enforce his right to recover possession of such goods is a failure by the hirer or buyer to pay an instalment of the hire-purchase price or total purchase price which is then due.

(3) The notice referred to in subsection (1) shall be in writing and shall state the amount of the hire-purchase price or total purchase price which is then due and unpaid, and shall further state that it is the intention of the owner or seller, on the expiration of twenty-one days after the notice

has been given to the hirer or buyer, to enforce his right to recover possession of the goods unless the hirer or buyer has previously made good his default.

(4) If within the period of twenty-one days after a notice has been given to the hirer or buyer under subsection (1) the hirer or buyer pays to the owner all instalments of the hire-purchase price or total purchase price due at the date of the giving of the said notice, the hire-purchase agreement or conditional sale agreement shall continue in force as if the breach stated in such notice had never occurred.

(5) For the purposes of this section, a notice shall be deemed to have been given if it is directed to the hirer or buyer, and delivered at, or dispatched by registered letter, or sent by electronic means to his address (includes electronic address) as mentioned in the hire-purchase agreement or conditional sale agreement.

(6) If an owner or seller recovers possession of goods in contravention of subsection (1), the provisions of section 23(2) shall apply as they apply where an owner or seller recovers possession of goods in contravention of section 23(1).

(7) This section shall not apply in any case in which the hirer or buyer has determined the agreement by virtue of any right vested in him.

Obstruction.

30. If, when the enforcement by an owner or seller of a right to recover possession of goods from a hirer or buyer is not subject to any restriction imposed by or under this Act, the hirer or buyer obstructs or attempts to obstruct the owner or seller in the lawful exercise of his right to recover possession of such goods, the hirer or buyer commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.

Installation charges.

31. (1) Where under any hire-purchase agreement or conditional sale agreement made after the commencement of this Act the owner or seller is

required to carry out any installation, the note or memorandum of the agreement shall specify the amount to be paid in respect of the installation but the amount shall not be treated for the purposes of this Act as part of the hire-purchase price or total purchase price.

(2) For the purposes of this section, the expression "installation" means –

(a) the installing of any electric supply line or any water line;

(b) the fixing of goods to which the agreement relates to the premises where they are to be used, and the alteration of premises to enable any of the goods to be used on it;

(c) where it is reasonably necessary that any of the goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of the construction or erection.

Jurisdiction of the magistrate's court.

32. (1) Without prejudice to the jurisdiction of the High Court in appropriate cases, the magistrate's court in its civil jurisdiction shall have jurisdiction to hear and determine any action or any other proceeding under this Act, notwithstanding that the hire-purchase price or the total purchase price of the goods in question or whatever the sum of money claimed exceeds the monetary limit of the jurisdiction of the magistrate's court.

Cap. 7:05
Cap. 3:05
Cap. 3:04

(2) Subject to subsection (1), the Summary Jurisdiction (Petty Debt) Act, the Summary Jurisdiction (Magistrates) Act and the Summary Jurisdiction (Appeals) Act and any rules made thereunder shall apply in respect of every such action or proceeding.

Responsibility of owner or seller to insure goods.

33. (1) Where there is a requirement under a hire-purchase agreement, credit sale agreement or conditional sale agreement that any goods the subject matter of the agreement are to be insured or to be kept insured it is the responsibility of the owner or seller to ensure that such insurance is effected at the cost of the hirer or buyer.

(2) The party who insured the goods shall, within seven days of insuring the goods, provide the other party with the insurance policy.

PART V
MISCELLANEOUS

Application of Act in relation to existing agreements.

34. (1) The following sections of this Act shall, to the extent specified, apply in relation to all hire-purchase agreements or conditional sale agreements whether made before or after the commencement of this Act, that is to say –

(a) section 14, so far as it relates to payments made after the commencement of this Act;

(b) section 22, so far as it relates to recovery of possession of goods after the commencement of this Act.

(2) Except as provided in subsection (1), this Act shall not apply in relation to any hire-purchase agreement, credit sale agreement or conditional sale agreement made before the commencement of this Act.

Regulations Schedule

35. (1) The Minister may make regulations which the Minister considers necessary for the better carrying into effect of the provisions of this Act, including to prescribe anything under the Act to be prescribed or to amend the Schedule.

(2) Any person who commits an offence under the Regulations shall be liable on summary conviction to a fine of two hundred thousand dollars and to imprisonment for three months.

SCHEDULE sections 3(4)(c), 4(3)(c) and 35

PART I

NOTICE TO BE INCLUDED IN NOTE OR MEMORANDUM OF HIRE-PURCHASE AGREEMENT

RIGHT OF HIRER TO TERMINATE AGREEMENT

1. The hirer may put an end to this agreement by giving notice of termination in writing to any person who is entitled to collect or receive the hire-purchase price and at the same time of the giving of the notice or prior to that time by delivering the goods to the owner.

2. The hirer shall pay any instalments which are in arrear at the time when he gives notice of termination.

3. If the hirer does not deliver the goods to the owner at the time mentioned in paragraph 1 above, the notice of termination shall be ineffective and the agreement shall remain in force.

4. If the goods have been damaged owing to the hirer having failed to take reasonable care of them, the owner may sue him for the amount of the damage unless that amount can be agreed between the hirer and the owner.

5. If this agreement contains provisions allowing the hirer to put an end to the agreement on terms more favourable to him than those mentioned in the four preceding paragraphs, the hirer may put an end to the agreement on those terms.

RESTRICTION OF OWNER'S RIGHT TO RECOVER GOODS WHERE SEVENTY OR MORE PER CENT OF THE HIRE-PURCHASE PRICE HAS BEEN PAID

1. After seventy or more per cent of the hire-purchase price has been paid, then unless the hirer has himself put an end to the agreement, the owner of the goods cannot take them back from the hirer without the hirer's consent unless the owner obtains an order of the court.
2. If the owner applies to the court for such an order, the court may, if the court thinks it just to do so, allow the hirer to keep either –
    (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.

RESTRICTION OF OWNER'S RIGHT TO RECOVER GOODS WHERE LESS THAN SEVENTY PER CENT OF THE HIRE-PURCHASE PRICE HAS BEEN PAID

1. Where less than seventy per cent of the hire-purchase price has been paid, unless the hirer has himself put an end to the agreement or has committed some breach of the agreement other than failure to pay an instalment of the hire-purchase price, the owner of the goods cannot take them back from the hirer without the hirer's consent unless the owner has given the hirer twenty-one days written notice of his intention to do so.
2. If within the period of twenty-one days the hirer pays to the owner all instalments of the hire-purchase price due at the date of the issue of such notice, the agreement will continue in force.

PART II

NOTICE TO BE INCLUDED IN NOTE OR MEMORANDUM OF CONDITIONAL SALE AGREEMENT

RIGHT OF BUYER TO TERMINATE AGREEMENT

1. The buyer may put an end to this agreement by giving notice of termination in writing to any person who is entitled to collect or receive the total purchase price and at the same time of the giving of the notice or prior to that time by delivering the goods to the owner.
2. The buyer shall pay any instalments which are in arrear at the time when he gives notice of termination.
3. If the buyer does not deliver the goods to the seller at the time mentioned in paragraph 1 above, the notice of termination shall be ineffective and the agreement shall remain in force.
4. If the goods have been damaged owing to the buyer having failed to take reasonable care of them, the seller may sue him for the amount of the damage unless that amount can be agreed between the buyer and the seller.

5. If this agreement contains provisions allowing the buyer to put an end to the agreement on terms more favourable to him than those mentioned in the four preceding paragraphs, the buyer may put an end to the agreement on those terms.

RESTRICTION OF SELLER'S RIGHT TO RECOVER GOODS WHERE SEVENTY OR MORE PER CENT OF THE TOTAL PURCHASE PRICE HAS BEEN PAID

1. After seventy or more per cent of the total purchase price has been paid, then unless the buyer has himself put an end to the agreement, the seller of the goods cannot take them back from the buyer without the buyer's consent unless the seller obtains an order of the court.
2. If the seller applies to the court for such an order, the court may, if the court thinks it just to do so, allow the buyer to keep either –
    (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.

RESTRICTION OF SELLER'S RIGHT TO RECOVER GOODS WHERE LESS THAN SEVENTY PER CENT OF THE TOTAL PURCHASE PRICE HAS BEEN PAID

1. Where less than seventy per cent of the total purchase price has been paid, unless the buyer has himself put an end to the agreement or has committed some breach of the agreement other than failure to pay an instalment of the total purchase price, the seller of the goods cannot take them back from the buyer without the buyer's consent unless the seller has given the buyer twenty-one days written notice of his intention to do so.
2. If within the period of twenty-one days the buyer pays to the seller all instalments of the total purchase price due at the date of the issue of such notice, the agreement will continue in force.

Passed by the National Assembly on the 30th November, 2022.



S.E. Isaacs,

Clerk of the National Assembly.

(BILL No. 14/2020)