

## THE HIRE-PURCHASE (AMENDMENT) ACT 1992

The Hire-Purchase (Amendment) Act 1992 (hereafter referred to as "the Amendment Act") came into force on 1st June 1992.<sup>1</sup> It makes many significant amendments to the principal Act, the Hire-Purchase Act 1967 (hereafter referred to as "the principal Act"). This note attempts to discuss the said amendments.

### 1. The First Schedule

The principal Act only applies in respect of "hire-purchase agreements relating to the goods in the First Schedule".<sup>2</sup> Before the Amendment Act the contents of the Schedule were specified as follows:<sup>3</sup>

1. Motor vehicles, namely -
  - (a) Invalid carriages;
  - (b) Motor cycles;
  - (c) Motor cars including taxi cabs and hire cars;
  - (d) Goods vehicles (where the maximum permissible laden weight does not exceed 50 cwts);
  - (e) Buses, including stage buses.
2. Radio sets, television sets, tape-recorders, and any combination thereof;
3. Refrigerators and deepfreeze food preservers, and any combination thereof;
4. Sewing machines other than those used for industrial purposes;
5. Washing machines;
6. Vacuum cleaners;
7. Air-conditioning units other than those used for industrial purposes;

<sup>1</sup>See P.U. (B) 217/1992.

<sup>2</sup>Section 1(2) of the principal Act.

<sup>3</sup>P.U. (A) 149/1983 which came into force on 1.5.1983.

8. Electric or gas cookers and ovens;
9. Video tape/cassette recorders;
10. Type-writers;
11. Organs and pianos;
12. Photostat machines/copiers;
13. Hi-fi systems

The Amendment Act substitutes<sup>4</sup> a new First Schedule the contents of which are as follows:

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

A definition of "consumer goods" is now inserted in section 2(1) of the principal Act.<sup>5</sup> The expression is defined as "goods purchased for personal, family or household purposes". This would mean that the hire-purchase of all categories of goods obtained by a person for his personal, family or domestic purpose will be regulated by the principal Act. Goods, other than the motor vehicles listed in the schedule, obtained by hire-purchase by an individual for a business purpose will not be regulated. Thus a sole proprietor of a business who obtains a refrigerator or a photo-copier or a sewing machine on hire-purchase to expand his business will no longer enjoy the protection of the principal Act. Before the Amendment Act the legal status of the hirer (whether he was an individual, a corporation, a firm or a society) was irrelevant. The principal Act applied as long as the goods let were specified in the Schedule. After the above amendment the legal status of the hirer will continue to be irrelevant in the case of motor vehicles listed in the Schedule. However in

<sup>4</sup>Section 32, Hire-Purchase (Amendment) Act 1992. The Amendment Act will be referred to in subsequent footnotes as HP(A)A 1992.

<sup>5</sup>Section 2, HP(A)A 1992.

the case of hire-purchase of consumer goods the operation of the principal Act will be limited to cases where the hirer is a natural person and the goods are obtained for a non-business purpose.

The amendments to the First Schedule will afford greater protection to the consumer. The hire-purchase of some common categories of consumer goods (e.g. furniture and computers) was unprotected until the coming into force of the Amendment Act. Needless to say, although the Schedule has been expanded there will still be hire-purchase agreements which fall outside the principal Act e.g. where the goods involved are neither "consumer goods" nor motor vehicles as listed in the Schedule. Thus an existing problem regarding the uncertainty as to what law applies to the hire-purchase of goods outside the Schedule will still remain. This matter has been previously dealt with elsewhere.<sup>6</sup>

## 2. Formation, contents and service of the hire-purchase agreement

### (a) *Second Schedule notices*

The Amendment Act makes significant changes to the law on the service of the Second Schedule notice. Section 4(1) of the principal Act had originally provided that the owner shall give to the prospective hirer a written notice in the form set out in the Second Schedule before the hire-purchase agreement is entered into. Unfortunately the principal Act did not provide a civil or criminal sanction for a breach of section 4(1). However in *Affin Credit v Yap Yuan Fei*<sup>7</sup> the Federal Court held that a breach of section 4(1) made the subsequent hire-purchase agreement void *ab initio*.

The Amendment Act makes significant changes to this area of the law by substituting<sup>8</sup> the original section 4(1) with elaborate new provisions. It also substitutes the form of notice in the Second Schedule with a new form containing

<sup>6</sup>See [1980] JMCL 277-283.

<sup>7</sup>[1984] 1 MLJ 169.

<sup>8</sup>Section 4, HP(A)A 1992.

two parts, Parts I and II. The Amendment Act makes a distinction between bipartite (owner-hirer) transactions and tripartite (owner-dealer-hirer) transactions. In the first category of transactions the owner or the person acting on his behalf is required to serve "a duly completed" notice in the form of Part I of the Schedule on the hirer before the agreement is signed (section 4(1)(a)). The form in Part I provides the hirer with particulars of the goods and details of his financial obligations. Part II of the Schedule is a document signed by the prospective owner that he consents to be a party to the proposed hire-purchase agreement. In a tripartite transaction Part II of the Second Schedule must be served on the hirer after the service of Part I but before the agreement is entered into (section 4(1)(b)). A hire-purchase agreement entered into in breach of the above provisions shall be void. An owner and a dealer who do not comply with the above provisions commit an offence under the principal Act.<sup>9</sup>

Service of the Second Schedule documents mentioned above are to be effected "by delivering it in person to the intending hirer or his agent" who is required to acknowledge receipt by signing the said documents (section 4 (2)).

A prospective hirer who has been served with the documents is not bound to enter into a hire-purchase agreement. No payment or other consideration shall be required from the hirer for the preparation and service of the documents (section 4(3)). Breach of these provisions is a criminal offence under the principal Act (section 4 (6)).

The obvious purpose of the Second Schedule documents is to provide the intending hirer with an opportunity to reflect upon his potential financial commitments and if necessary to change his mind. Unfortunately the Amendment Act imposes no minimum period which must lapse between the serving of the documents and the signing of the agreement. This, in our opinion, dilutes the utility and efficacy of the above provisions.

<sup>9</sup>See section 46 of the principal Act which provides as follows: "Any person who is guilty of an offence under this Act or any regulations made thereunder for which no other penalty is expressly provided by this Act or regulations shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding six months or to both."

(b) *Form of the agreement*

Section 4(2) of the principal Act which dealt with the form of a hire-purchase agreement has been substituted<sup>10</sup> by four new sections namely sections 4A, 4B, 4C and 4D.

Section 4A(1) requires a hire-purchase agreement in respect of any goods specified in the First Schedule to be in writing. This in itself is not new as a similar requirement was found in the repealed section 4(2)(a) of the principal Act. However, the effect of a breach of the former provision under the principal Act was that the agreement was not "enforceable by the owner" (section 6(1)). The hirer thus had the option to treat the agreement as enforceable. Section 4A(2) as substituted by the principal Act provides that a hire-purchase agreement that does not comply with section 4A(1) shall be void. It denies the hirer an option to treat the agreement as enforceable.

Section 4B(1) requires the agreement to be signed by or on behalf of all parties to the agreement. Section 4B(2) is a significant new provision. It provides that "no owner, dealer, agent or person acting on behalf of the owner shall require or cause any intending hirer or his agent to sign a hire-purchase agreement or any other form or document relating to a hire-purchase agreement unless such hire-purchase agreement, form or document has been duly completed". The principal Act was silent on the legal status of agreements signed in blank or with blank spaces. The Amendment Act clarifies the legal position by providing that such agreements shall be void (section 4B(3)).

Section 4C(1) sets out the statutory requirements regarding the contents of every hire-purchase agreement. In effect it re-enacts the provisions found in the repealed section 4(2)(c), (d) and (e) of the principal Act except for a new requirement that the agreement must set out the annual percentage rate for terms charges. The annual percentage rate must be worked out in accordance with the formula set out in a new Seventh Schedule.

<sup>10</sup>Section 5, HIP(A)A 1992.

Section 4D(1) requires a separate hire-purchase agreement for every item of goods purchased under the Act. The requirement does not affect goods which are "essentially similar or complementary to each other and sold as a set" (section 4D(4)).

A breach of any of the above provisions renders the relevant hire-purchase agreement void. In addition the owner is guilty of an offence under the principal Act. Where section 4B(2) above is not complied with the owner as well as the dealer, agent or any person acting on the owner's behalf commit an offence under the principal Act.

*(c) Service of a copy of the agreement and the Third Schedule notice*

Section 5(1) (a) of the principal Act required the owner to serve on the hirer a copy of the hire-purchase agreement. In addition the owner was required under section 5(1)(b) to serve a notice in the form of the Third Schedule. Both documents were required to be served on the hirer within fourteen days after the making of the hire-purchase agreement.

The Amendment Act substitutes<sup>11</sup> a new section 5(1) which makes two significant changes. Under the new provision a copy of the agreement must be served within fourteen days not only on the hirer but also on his guarantors, thus remedying a defect in the principal Act. The new section (5)(1) does not contain a provision similar to the previous section 5(1)(b). Thus the duty to serve the Third Schedule notice has been repealed. The Schedule itself is repealed by section 34 of the Amendment Act. One may question the wisdom of this amendment. The Third Schedule notice served a useful purpose in that it informed the hirer as to some of his statutory rights under the principal Act. In our opinion this amendment is not in the interest of hirer-protection.

No criminal liability is created for a breach of section 5(1) but a new civil penalty created<sup>12</sup> by a new section 5(1A) renders the relevant hire-purchase agreement "unenforceable by the owner". The intention appears to be to avoid the

<sup>11</sup>Section 6, HP(A)A 1992.

<sup>12</sup>*Ibid.*

consequences of a void contract. The hirer may enforce the contract against the owner.

The Amendment Act also amends section 5(2)(b) of the principal Act. The principal Act in section 5(2)(a) imposes a duty on the owner to supply to the hirer at his (hirer's) request a copy of any memorandum or note of the agreement on payment of a prescribed fee. Under section 5(2)(b) the hirer was entitled to "only one free copy" if no fee was prescribed. This ambiguous provision has been replaced<sup>13</sup> by an equally ambiguous new provision which reads:

where no fee is prescribed, one free copy, and thereafter a fee as may be prescribed shall be charged for the supply of a second or subsequent copy thereof.

(d) *Service of a copy of the insurance policy*

Section 5(3) of the principal Act applies where the amount financed includes the cost of an insurance policy in respect of the goods let. The section imposes a duty on the owner to serve on the hirer a copy of the relevant policy within seven days of its receipt by the owner. Section 5(3) is now amended<sup>14</sup> to impose an additional duty on the owner to serve on the hirer a copy of "the insurance payment receipt". The copy of the receipt, unlike the copy of the policy, must be served "forthwith".

(e) *Repeal of section 6 of the principal Act*

Section 6(1) of the principal Act dealt with the civil penalty if an agreement was not in writing and, consequently, contravened section 4(2)(a) of the Act. Section 6(2) provided the civil consequences if an agreement contravened section 4(2) (b), (c), (d) and (e) relating to the contents of a hire-purchase agreement, and section 5 relating to the service of a copy of a hire-purchase agreement and the relevant insurance policy in respect of the goods. These provisions are now repealed.<sup>15</sup>

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Section 7, HP(A)A 1992.

This repeal is a consequential amendment as the civil consequences for the breach of each of the new provisions on the form and contents of the agreement are stated together with the relevant new provision. There appears to be an oversight in the case of a breach of section 5(2) and (3). Under the principal Act a civil remedy was provided for a breach of the whole of section 5 in section 6(2). Section 5 as amended creates a new section 5(1A) which provides a civil penalty for a breach of section 5(1). No civil or criminal penalty is created by the Amendment Act for a breach of section 5(2) and (3). With the repeal of section 6(2) the civil consequence stated therein can no longer be utilised for a breach of section 5(2) or (3).

### **3. Hirer's right to request for documents and information**

Under section 9(1) of the principal Act the hirer has a right to request a statement from the owner showing

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

Section 9(1) is now amended<sup>16</sup> by adding immediately after (c) a new paragraph (d) which reads

- (d) the amounts derived from interest on overdue instalments

The criminal sanction for a breach of section 9(1) is provided in section 9(3) of the principal Act. This is now amended<sup>17</sup> by increasing the fine stated therein from not exceeding two hundred ringgit to one thousand ringgit.

### **4. Assignment of the right, title and interest of the hirer**

Section 12 (1) of the principal Act provides that the right, title and interest of a hirer under a hire-purchase agreement

<sup>16</sup>Section 8, HP(A)A 1992.

<sup>17</sup>*Ibid.*



may be assigned with the consent of the owner, or if his consent is unreasonably withheld, without his consent. Under section 12(2) the owner's consent shall be deemed to be unreasonably withheld if he requires a money payment or other consideration as a condition for his consent. Section 12(3) deals with the right of the hirer to apply to "a court" for relief if the owner does not consent to a proposed assignment by the hirer. Under section 12(4) the owner may validly stipulate all or any of the conditions stated in that subsection as his condition or conditions for granting his consent to the assignment.

The Amendment Act makes two changes to section 12.

First it substitutes<sup>18</sup> the words "the High Court" for the words "a court" in section 12(3). This amendment arises from the fact that the definition of the word "court" has been deleted from section 2 of the principal Act by the Amendment Act. In effect the amendment makes no change in law because the word "court" was defined by the (now) deleted definition as "unless to the contrary expressly provided means the High Court".

Secondly it creates<sup>19</sup> a new subsection (5) which deals with the refusal of the owner to give his consent to an assignment on the ground that he requires other or additional guarantors to guarantee the assignee's obligations. The new provision provides that such a refusal shall be deemed unreasonable where

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

##### 5. Early completion of the agreement

Section 14(1) of the principal Act gives the hirer a statutory right to make an early completion of the agreement (and

<sup>18</sup>Section 9, HP(A)A 1992.

<sup>19</sup>*Ibid.*

become the owner of the goods let) by paying "the net balance due" as defined in section 14(2). Under section 14(3) (b) this right may also be exercised after the owner has taken possession of the goods provided that it is exercised within fourteen days after the owner has served the Fifth Schedule notice on the hirer. In such a case the hirer must not only pay the net balance due but also costs (if any) incurred by the owner for repossession, storage, repair or maintenance of the goods. The period of fourteen days in section 14(3) (b) is now increased to twenty-one days.<sup>20</sup> Secondly a new paragraph (c) is added<sup>21</sup> to section 14(3). This new provision reads:

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

By the introduction of paragraph (c) to section 14(3), the Act now distinguishes an early completion exercised after the owner has taken possession of the goods and an early completion exercised after the hirer has voluntarily returned the goods to the owner after the service on the hirer of the Fourth Schedule notice. In the first situation the owner is entitled to claim certain reasonable costs e.g. costs of repossession in addition to the net balance due. In the second situation, the owner is entitled only to the net balance due as computed under section 14(2).

## 6. Early determination

Section 15(1) of the principal Act gives the hirer a voluntary right to "terminate the hiring" by returning the goods let to the owner. The principal Act did not contain any provision which entitled the hirer to recover any part of the payments he had made to the owner where he voluntarily terminates the hiring. In effect this meant that the hirer could not

<sup>20</sup>Section 10, HP(A)A 1992.

<sup>21</sup>*Ibid.*

recover any part of the sums he had paid even though his voluntary termination resulted in a profit for the owner. Instead the principal Act provided in section 15(5) that the owner was entitled to recover from the hirer

- (a) the amount (if any) required to be paid in those circumstances under the agreement; or
- (b) the amount (if any) that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring,

whichever is the less.

The Amendment Act makes significant changes to section 15.

(a) *"Hiring" substituted with "agreement"*

The first amendment is the substitution<sup>22</sup> of the word "hiring" wherever it appears in section 15 with the word "agreement". The reason for this amendment is unclear. The probable reason is the fact that a termination of the "hiring" does not necessarily put an end to the hire-purchase agreement for all purposes. Where it is the "hiring" but not the "agreement" that is terminated certain rights (e.g. the hirer's option to purchase) may still continue to exist. The probable intention of the Amendment Act in substituting the word "agreement" for the word "hiring" is to remove any ambiguity as to whether any rights of either owner or hirer may survive the termination.

(b) *Hirer's and owner's rights after voluntary termination*

(i) *Hirer may introduce a buyer*

The second amendment<sup>23</sup> is the substitution of subsection 5 of section 15 with a new subsection which makes radical changes to the existing law. By a new provision, namely

<sup>22</sup>Section 11, HP(A)A 1992.

<sup>23</sup>*Ibid.*

section 15(5) (a), the hirer may require the owner to sell the goods returned to any person introduced by the hirer who is prepared to buy the goods for cash at the price "agreeable to the owner". This an indefeasible new right of the hirer but unfortunately the time limit for the hirer to exercise this right is not stated.

(ii) *Hirer may recover part of his payments*

Another new provision,<sup>24</sup> namely section 15(5) (b) now gives a hirer a right to recover part of his payments in certain circumstances. This significant new provision ensures that the hirer does not suffer a loss when he makes an early termination. The new provision provides that where the "value of the goods" at the time when it is returned is more than the "balance outstanding under the hire-purchase agreement" the hirer is entitled to the difference which is recoverable as a debt due.

(iii) *Owner's right in a voluntary termination*

Conversely, by virtue of a new section 15(5)(c) where the "value of the goods" at the time when it is returned to the owner is less than the "balance outstanding under the hire-purchase agreement", the owner is entitled to the difference which is recoverable as a debt due. This provision ensures that while the owner may no longer make a profit from the hirer's early determination he would not in those circumstances be forced to suffer a loss.

It is pertinent to note that the substituted section 15(5) has made redundant the role of minimum payment clauses which operate in a voluntary termination by the hirer. Under the substituted section 15(5) the amount payable by the hirer, if applicable, is determined by a fixed mode of computation as set out in paragraph (c). Unlike under the repealed provision, it is no longer necessary to consider whether there is a clause in the agreement which requires an amount to be paid in a hirer's determination and, secondly, to compute that amount.

<sup>24</sup>*ibid.*

(iv) *Definitions of "balance outstanding" and "value of the goods"*

The two new terms "*balance outstanding under the hire-purchase agreement*" and "*value of the goods at the time when it is returned to the owner*" are defined in a new sub-section 6 added<sup>25</sup> to section 15. The first term is defined as the total sum payable by the hirer to complete the purchase of goods to which the agreement relates and the amount derived from interest on overdue instalments which has yet to be paid less

- (i) the amount paid by or on behalf of the hirer excluding deposit;
- (ii) statutory rebate for terms charges; and
- (iii) statutory rebate for insurance, if any.

The second term is defined as

- (i) the best price that could reasonably be obtained by the owner; or
- (ii) if the hirer had introduced a person who had bought the goods for cash, the amount paid by that person.

## 7. Recovery of possession

The principal Act in section 16(1) restricts the owner's power of repossession where such a power arises from a default of the hirer in the payment of instalments. It provides that the power may not be exercised unless there had been two successive defaults of payments or a default in respect of the last payment.

### (a) *Deceased hirers*

The Amendment Act makes an important change in the case of deceased hirers. A new subsection (1A)<sup>26</sup> added to section 16 provides that where a hirer is deceased, an owner

<sup>25</sup>*Ibid.*

<sup>26</sup>Section 12, HP(A)A 1992.

shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there has been four successive defaults of payments.

This new provision will greatly assist personal representatives and beneficiaries of the estates of deceased persons. When a person dies the monies due to his estate, e.g. payments under insurance policies, Employees' Provident Fund contributions and pension cannot always be collected quickly and the grace period provided by the Amendment Act will be useful.

*(b) Service of the Fifth Schedule notice*

The principal Act in section 16(3) imposes a duty on the owner, who has taken possession of the goods let, to serve a notice on the hirer in the form set out in the Fifth Schedule. The principal Act provided that the notice should be served within fourteen days after the owner had retaken the goods let. The Amendment Act now amends<sup>27</sup> section 16(3) to increase the period of fourteen days to twenty-one days.

*(c) Voluntary return of the goods let by the hirer*

A new section, section 16A, is inserted<sup>28</sup> into the principal Act to further strengthen the position of the hirer. This section provides that a hirer who returns the goods within twenty-one days after the service on him of the Fourth Schedule notice shall not be liable to pay

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

The Fourth Schedule notice is also amended<sup>29</sup> to include a notice to the hirer that he will not be required to pay the

<sup>27</sup>*Ibid.*

<sup>28</sup>Section 13, HP(A)A 1992.

<sup>29</sup>Section 35, HP(A)A 1992.

aforesaid items if he returns the goods to the owner within the prescribed period of twenty-one days.

It must be noted that the new section 16A makes no reference to two other claims mentioned in section 17(3) and sometimes claimed by owners, namely cost of repair and cost of maintenance. It must also be noted that this new provision only applies to cases of repossession where the Fourth Schedule notice is served on the hirer. It is therefore restricted to cases of repossession for non-payment of instalments under sections 16(1) and 16(1A). Where the repossession is for some other breach of the agreement the service of the Fourth Schedule notice does not arise and the new protection will not apply.

*(d) Owner's duty not to sell or dispose of goods repossessed for a fixed time*

Section 17 of the principal Act provided that "where the owner has taken possession of any goods" he shall not, without the written consent of the hirer, sell or dispose of the goods or part with possession thereof until after the expiration of fourteen days after the date of service on the hirer of the Fifth Schedule notice. The Amendment makes three significant changes to the existing law.

*(i) Duty under section 17 restricted to repossessions under section 16*

First the words "under section 16" are inserted<sup>30</sup> immediately after the words "any goods" in section 17. The reason for this amendment is unclear. In our view it may weaken the protection enjoyed by the hirer. Its effect can only be understood if the structure of section 16 is examined in detail. It is pertinent to point out that the owner's power to repossess is dealt with by sections 16(1), (1A) and (2). These provisions strictly regulate the exercise of the power in cases of repossession for "breach of the agreement relating to the payment of instalments". On the other hand,

<sup>30</sup>Section 14, HP(A)A 1992.

- (i) section 16(3) which deals with the duty to serve the Fifth Schedule notice,
- (ii) section 16(4) which deals with the duty to deliver a document acknowledging receipt of the goods repossessed,
- (iii) section 16(5) which deals with the contents of the document acknowledging receipt and
- (iv) section 16(6) which deals with the situation where the Fifth Schedule notice is not served,

do not appear to be restricted, to repossessions under section 16(1) and (1A), namely for failure to pay instalments.

Similarly before the amendment the owner's duty in section 17 not to sell or dispose of the goods for fourteen days after the service of the Fifth Schedule notice was not expressly limited to a repossession for failure to pay instalments. This was because (the unamended) section 17 applied to all cases "where the owner has taken possession of the goods". The phrase "where the owner has taken possession of the goods" was not qualified to limit the protection provided to a repossession for a breach relating to the payment of instalments. The Amendment Act by adding the words "under section 16" appears to limit the duty stated in section 17 to cases of repossession under section 16(1) and (1A), namely to repossessions for non-payment of instalments. In this respect the amendment appears to benefit owners and weaken the position of hirers.

*(ii) Period of fourteen days increased to twenty-one days*

The second amendment to section 17 relates to the period of fourteen days stated therein. This period is now increased<sup>31</sup> to twenty-one days.

*(iii) Criminal sanction for a breach of section 17*

A serious defect in the principal Act was its omission to provide a civil or criminal sanction for a breach of the

<sup>31</sup> *Ibid.*



owner's duty in section 17. The Amendment Act now provides<sup>32</sup> that an owner who sells or disposes of any goods or parts with possession of any goods in contravention of section 17(1) shall be guilty of an offence under the principal Act.

#### **8. Hirer's rights after a recovery of possession**

Section 18(1) and (2) of the principal Act deal with the rights of the hirer "where the owner takes possession of any goods comprised in a hire-purchase agreement". The rights, which are subject to various qualifications as set out in the Act, may be summarised as follows:

- (i) a right to reinstate the agreement by giving written notice to the owner within fourteen days of the service of the Fifth Schedule notice (section 18(1)(a)(i)).
- (ii) a right to introduce a cash buyer to purchase the goods repossessed from the owner within fourteen days of the service of the Fifth Schedule notice (section 18(1)(a)(ii)).
- (iii) a right to recover part of his payments to the owner where the sum of his total payments and the value of the goods repossessed exceeds the net amount payable (section 18(1)(b)).

Also, by section 18(2) the principal Act imposed a ceiling on the money claim that an owner may bring against a hirer.

The Amendment Act makes a number of changes to the existing law.

#### **(a) *Hirer's statutory rights restricted to repossessions under section 16***

First, the words "comprised in a hire-purchase agreement" in section 18(1) and(2) are substituted<sup>33</sup> by the words "under section 16". The significance and the consequence of the

<sup>32</sup>*Ibid.*

<sup>33</sup>Section 15, HP(A)A 1992.

addition of the words "under section 16" has been dealt with above in our discussion on a similar amendment to section 17. The addition of the words "under section 16" to sections 18(1) and (2) appear to restrict the statutory rights mentioned therein to cases of repossession for non-payment of instalments.

*(b) Time period for exercise of hirer's rights is extended*

Secondly the time period of fourteen days for the hirer to exercise his rights under section 18 is now extended<sup>34</sup> to twenty-one days. As a consequence of this amendment the form of notice in the Fifth Schedule is also amended.<sup>35</sup> The time period of fourteen days stated in parts (a) and (b) of the Schedule is increased to twenty-one days.

Another amendment<sup>36</sup> to part (b) of the Schedule may be noted at this stage. Part (b) sets out the various items that make up the amount payable by the hirer for making an early completion (after the goods had been repossessed by the owner). This part is now amended to add "arrear of interest due on overdue instalments" as an additional item.

*(c) "Value of goods" need not be the value at the time of repossession*

Another amendment affects section 18(3)(b) of the principal Act. Section 18(3) (b) deals with how "the value of the goods" repossessed should be determined for the purpose of computing

- (i) the sum (if any) recoverable by the hirer under section 18(1)(b) and
- (ii) the ceiling fixed in section 18(2) on the money claim which the owner may bring against the hirer.

<sup>34</sup> *Ibid.*

<sup>35</sup> Section 36, HP(A)A 1992.

<sup>36</sup> *Ibid.*

For these purposes a relevant provision was a part of section 18(3) (b) which stated that "the value of any goods at the time of the owner taking possession thereof is

- (i) the best price could reasonably be obtained at that time.....

The words "that time" indicated that the value which was relevant for the computations mentioned above was the value at the time of repossession and not the value at the time of the sale of the goods by the owner or at some other subsequent time. The Amendment Act amends<sup>37</sup> this provision by deleting the words "at that time" from section 18(3) (b)(i). Thus the value at the time of repossession is no longer the only relevant value. The possible reason for this amendment is the probability that the goods may be sold, after a lapse of some weeks or months after repossession and the amount realised may be much lower (or higher) than the value at the time of repossession.

- (d) *Hirer's new rights where goods are to be sold (i) by public auction and (ii) otherwise than by public auction at a price below the owner's estimate*

Another new development is the creation of two new rights for the hirer. Section 18(4) of the principal Act placed upon the owner the onus of proving that the price obtained by him in a sale of the goods repossessed was the best price that could be reasonably obtained by him at the time when he took possession of the goods.

It has been substituted<sup>38</sup> by a new provision which reads as follows:

- (4) Where an owner takes possession of any goods comprised in a hire-purchase agreement and intends to sell them -
  - (a) by public auction, he shall be required to serve or cause to be served on the hirer a copy of the notice of such public auction not less than fourteen days from the date the said auction is to be held; or

<sup>37</sup>Section 15, HP(A)A 1992.

<sup>38</sup>*Ibid.*

- (b) otherwise than by public auction, he shall be required to give the hirer an option to purchase the goods at the price at which he intended to sell them if that price is less than the owner's estimate of the value of the goods repossessed as stated in the notice referred to in section 16(3),

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

This new provision creates two new rights for the hirer. A significant feature of both rights is the fact that they are applicable "where an owner takes possession of any goods comprised in a hire-purchase agreement". Unlike in the case of the amended sections 17, 18(1) and 18(2) the qualifying words "under section 16" are omitted.

The first right, namely to be served with a notice of any public auction to sell the goods repossessed, needs no comment. The second right, namely to be given an option to purchase the goods, only applies where the owner intends to sell the goods otherwise than by public auction at a price less than his estimated price stated in the Fifth Schedule notice. It does not apply where the owner intends to sell at or more than, the estimated price stated in the Fifth Schedule notice. A possibility is that an unscrupulous owner may deliberately state a low estimate in the Fifth Schedule to avoid giving the option. An owner who resorts to such a device must bear in mind that a low estimate may tempt the hirer to introduce a cash buyer under section 18(1)(a).

#### 9. Time limits prescribed in section 19

- (a) *Extension of the time period for payment by the hirer for redelivery of goods*

Section 19(1) of the principal Act deals with how the hirer may regain possession of the goods repossessed by exercising his right under section 18(1)(a). Section 19(1) provided that the owner must forthwith return the goods repossessed to the hirer if, within fourteen days after giving notice to the owner to redeliver the goods, the hirer pays the sums as specified in that section or remedies the breaches in accordance with the section. The fourteen day period stated above is

now amended<sup>39</sup> and increased to twenty-one days.

(b) *Extension of the time period for hirer to remedy the breach*

Section 19(2) applies where, at the time the goods are returned to the hirer, any breach of the agreement has not been remedied by the hirer. In such a case the owner has no right to retake possession arising out of the same breach unless by a written notice at the time of the redelivery he requires the said breach to be remedied. The principal Act provided that if the hirer failed to do so within fourteen days or such longer period in the said notice (whichever is the longer) the owner may retake possession of the goods. The fourteen day period is now amended<sup>40</sup> and increased to twenty-one days.

#### 10. Guarantors

Part V of the principal Act deals with guarantors to a hire-purchase agreement. It is amended<sup>41</sup> by the addition of a new section 20A which reads:

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

This appears to be a superfluous provision. The Explanatory Statement to the Bill states that the new section 20A aims "to make it clear that the owner may require a hirer to furnish guarantors who are acceptable to the owner".

#### 11. Insurance

Significant amendments have been made to section 26 of the principal Act. Section 26 deals with the insurance of goods comprised in a hire-purchase agreement. Briefly it provided that

<sup>39</sup>Section 16, HP(A)A 1992.

<sup>40</sup>*Ibid.*

<sup>41</sup>Section 17, HP(A)A 1992.

- (i) an owner may require the goods let to be insured against any risks that he thinks fit
- (ii) an owner shall not require a hirer to insure with any particular insurer
- (iii) an owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance as required by the owner if he has no other grounds upon which he could reasonably refuse to enter into the agreement
- (iv) an owner shall not require a hirer to obtain insurance on such terms that the owner does not require if he arranges the insurance and
- (v) where the owner as a *bona fide* agent of an insurer arranges the insurance and the insurer allows any commission or rebate (including a no-claim rebate) to the owner the hirer is entitled to the commission and rebate and that it is an offence under the Act to pay the commission or rebate to the owner and for the owner to receive the same.

Section 26 is substituted<sup>42</sup> by a new provision which makes radical changes to the existing law.

(a) *Insurance is mandatory*

The new provision makes insurance mandatory for the goods comprised under a hire-purchase agreement. The section makes a distinction between motor vehicles and other categories of goods.

(b) *Goods other than motor vehicles*

Section 26(1)(b) applies to goods other than motor vehicles. It provides that an owner shall cause to be insured in the name of the hirer the said goods for the duration of time that the goods remain under hire-purchase against any risks that he (the owner) thinks fit. The amount payable shall form part of the hire-purchase price (section 26(7)).

<sup>42</sup>Section 18, HP(A)A 1992.

(c) *Motor vehicles*

In the case of a motor vehicle the owner's duty to insure the vehicle is for the first year only (section 26(1)(a)). The amount payable for insurance in the first year shall form part of the hire-purchase price. It shall be the duty of the hirer to insure the said vehicle for the second and all subsequent years that the vehicle remains under hire-purchase (section 26(2)). A hirer of a motor vehicle is also under a duty to inform the owner, not less than fourteen days before the expiry of a policy, that he has renewed the said policy or that he has caused a new policy to be issued in respect of the goods let (section 26(5)). Where the hirer has failed to renew or to effect a new policy the owner shall be at liberty to insure the vehicle and the costs thereby incurred shall be borne by the hirer.

An owner and a hirer who breach the duty to insure as set out in sections 26(1) and (2) above commit an offence under the Act (section 26(4)).

(d) *Owner shall not require the hirer to insure with any particular insurer*

Section 26(3) provides that an owner shall not require a hirer to insure any risks with any particular insurer. Surprisingly this provision is not backed by a civil or criminal sanction.

(e) *Hirer is entitled to commission and rebate*

Section 26(8) deals with any commission or rebate (including a no-claim rebate) given by an insurer to an owner who is a *bona fide* agent of the insurer and who arranges the insurance on behalf of the hirer. In such a case the hirer is entitled to the commission and rebate. Any person who knowingly pays or allows any such commission or rebate to an owner and any owner who receives the said payments commits an offence under the Act. An important difference between the repealed provision on this subject and the substituted provision is that the new provision does not apply to a "legitimate agency commission" paid to an owner.

(f) *Application of the protective provisions in sections 27 and 28*

Section 29(1) of the principal Act deals with the application of two preceding sections of the Act namely sections 27 and 28. Section 27 deals with the powers of the court in relation to an insurance contract associated with a hire-purchase agreement. Section 28 regulates the contents of an insurance contract associated with a hire-purchase agreement. Section 29(1) provided that sections 27 and 28 shall apply only to an insurance contract where the premium or any part thereof was included as part of the total amount payable for the goods comprised in the hire-purchase agreement. Section 29(2) of the principal Act provided that the provisions of Part VI (namely sections 26, 27, 28 and 29(1), all of which dealt with the insurance of goods let on hire-purchase) shall have effect notwithstanding anything to the contrary contained in any other written law.

The Amendment Act deletes<sup>43</sup> section 29(1). Section 29(2) is renumbered as section 29. The effect of this amendment is that the protective provisions of section 27 and 28 will not be restricted to an insurance contract where the premium or part of the premium was advanced as part of the credit provided by the owner. The amendment was probably prompted by the fact that in the case of motor vehicles the insurance for the second and subsequent years of the hire-purchase must be effected by the hirer and not by the owner.

## 12. Collection of additional payments

It was implied from section 4(e) of the principal Act that the total amount payable by a hirer under a hire-purchase agreement constituted the following elements:

- (i) the deposit;
- (ii) the difference between the cash price and the deposit;
- (iii) freight, if applicable;
- (iv) insurance payments, if applicable; and

<sup>43</sup>Section 19, HP(A)A 1992.



- (v) terms charges as regulated by section 30 of the principal Act and the Hire-Purchase (Terms Charges) Regulations 1968.

One of the defects in the Act was the absence of a clear provision prohibiting the collection of payments other than those mentioned above. The absence of a clear provision in the principal Act probably encouraged some owners, in the past, to demand additional payments from hirers, under various names such as "football money", "agreement fee", "service fee" and "legal fees". These extra payments were usually demanded in addition to the full terms charges at the maximum rate as permitted by the Act and the aforesaid Regulations. The Amendment Act has created<sup>44</sup> a new section 36A an attempt to curb this menace. The section reads:

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

The payments listed in the Second Schedule are

- (a) the deposit
- (b) freight charges, if any
- (c) vehicle registration fee, if any
- (d) insurance payments and
- (e) terms charges

It is to be noted that as a result of the amendments to the insurance provisions in section 26 (mentioned above) insurance is now mandatory but in the case of motor vehicles the owner may only collect insurance payments for the first year.

It is also to be noted that no civil remedy is provided by section 36A for the hirer where an unauthorised payment is collected. Despite the Amendment Act failing to provide a civil remedy for the collection of an unauthorised payment

<sup>44</sup>Section 20, HP(A)A 1992.

the hirer may have a civil remedy in section 30 of the principal Act. The scheme of the principal Act seems to be to treat all other charges other than for freight, vehicle registration and insurance, as terms charges. This seems to be the intention of the old provision in section 4(e)(vii) and the new provision in section 4C(c)(vii) both of which refer to term charges as "the amount of any other charges included in the total amount payable (in this Act referred to and in the agreement described as 'term charges')". It appears therefore that if the owner has already claimed term charges at the maximum rate, any additional payment claimed and received will be in contravention of section 30(1) and the civil remedy in section 30(2) will apply.

### **13. Prohibition against the collection of payments by persons other than the owner, dealer or owner's agent**

A new provision,<sup>45</sup> section 36B, reads as follows:

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

The phrase "any payment", is ambiguous. It apparently refers to payments permitted under the Act or validly due under a hire-purchase agreement. Section 36B is another new provision created for the protection of the hirer.

### **14. Issue of receipts**

A new provision,<sup>46</sup> namely section 36C (1) makes it mandatory for an owner, dealer, agent or person acting on behalf of the owner who collects any payment in respect of a hire-purchase agreement to issue a receipt to the hirer in respect of every payment collected.

Section 36C (2) provides that any person who contravenes subsection (1) above shall be guilty of an offence under the Act.

<sup>45</sup>*Ibid.*

<sup>46</sup>*Ibid.*

**15. Owner's duty to inform the hirer where any dealer or owner's agent has ceased to be authorised to collect payments**

Section 36D<sup>47</sup> is another new and novel provision. It applies where it is "within the knowledge of the owner" that any dealer, agent or person, acting on the owner's behalf to collect any hire-purchase payment has ceased to be authorised to act on his behalf. In such a case the owner is required to inform every hirer, from whom the said dealer or agent or person ordinarily collects payment, that the relevant person has ceased to be authorised so to act and that no further payments should be made to him. No civil or criminal penalty is provided for a breach of the owner's duty.

Section 36D as well as the previously mentioned sections 36B and 36C will serve as valuable new protection for the hirer. In our view the protection would have been further strengthened if the Amendment Act had gone further to state that a receipt issued by a dealer, agent or person acting on behalf of the owner for a payment by a hirer shall be conclusive evidence of that payment against the owner.

**16. Removal, loss or loss of possession of, the goods comprised in a hire-purchase agreement**

Section 37(2) of the principal Act dealt with the situation where a hirer removes the goods let from the address specified in the agreement. In such a situation he was required to inform the owner in writing or state in the owner's presence the new address where the goods are kept within fourteen days of the removal. Failure to comply with the above requirements was a criminal offence.

The Amendment Act replaces<sup>48</sup> section 37(2) with a new provision. The substituted provision deals with not only the situation where the hirer removes the goods but also with two additional situations, namely where the goods are lost and where the goods are removed from or taken out of the hirer's possession. The new provision imposes a duty on the

<sup>47</sup>*Ibid.*

<sup>48</sup>Section 21. HP(A)A 1992.

hirer to inform the owner in writing or state in the owner's presence,

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

Failure of the hirer to comply with the above duty within fourteen days is a criminal offence.

#### **17. Certain alterations of a hire-purchase agreement to be of no effect**

Section 39 of the principal Act dealt with any *alteration* or *addition* made to an agreement after it is signed by the hirer and the said alteration or addition related to the matters which were required to be specified or set out in all hire-purchase agreements by section 4(2)(c), (d) and (e). The said section dealt with the mandatory contents which were prescribed by the Act for every hire-purchase agreement. Section 39 stated that such an alteration or addition was of no effect unless consented to by the hirer or his agent by signing or initialing the agreement in the margin thereof opposite the alteration or addition.

Section 39 has been substituted<sup>49</sup> by a new provision which reads as follows:

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

<sup>49</sup>Section 22, HP(A)A 1992.

There is a significant difference between the repealed and the substituted provision. The repealed provision dealt with the alteration of the matters required to be specified or set out in a hire-purchase agreement by section 4(2)(c), (d) and (e). The substituted provision deals with the "alteration of any of the matters set out in the written statement or statements required to be served on the hirer pursuant to section 4(1)(a) or (b)", namely the written statements in the form set out in Parts I and II of the Second Schedule.

#### 18. Service of notices by the owner and the hirer

The Amendment Act makes three significant changes to the existing law on service of notices by the hirer or owner. Section 43 of the principal Act provided that any notice or document required to be served on or given or sent to any owner or hirer under the Act may be served, given or sent by

- (a) delivering it to him personally; or
- (b) leaving it at his place of abode or business; or
- (c) posting it by registered post to his last known place of abode or business.

The first change brought about is the deletion<sup>50</sup> of paragraph (b) above from section 43. The second change is the creation<sup>51</sup> of a new provision, section 43A, which provides that a court of a Magistrate may on the application of an owner or hirer, as the case may be, make an order for substituted service where it appears that it is impracticable to serve a notice or document under the two modes set out in the amended section 43.

The third change affects section 44 of the principal Act. This section provided that an owner or his servant or agent may establish *prima facie* proof of service of a document by his affidavit or oral evidence "as to the delivery, leaving or posting" of any notice or document required to be served.

<sup>50</sup>Section 23, HP(A)A 1992.

<sup>51</sup>Section 24, HP(A)A 1992.

This advantage was not made available to a hirer because the said section merely referred to proof of service by an owner and omitted any reference to proof of service by a hirer. The defect is now cured<sup>52</sup> by a new section 44 which replaces the former provision. Under the new provision both the owner and the hirer may establish *prima facie* proof of service by affidavit or oral evidence as to the "delivery, posting or service" of any notice or document required to be served. The phrase "delivery, posting or service" in the new provision replaces the phrase "delivery, leaving or posting" in the repealed provision. This change is necessary because of the deletion of paragraph (b) in section 43 and secondly because of the creation of the new section 43A, both of which were referred to above.

#### 19. Controller of Hire-Purchase and his powers of enforcement

Section 3 of the principal Act which dealt with the appointment of the Controller of Hire-Purchase, Deputy Controllers and Assistant Controllers of Hire-Purchase has been substituted<sup>53</sup> by an elaborate and detailed new provision. A noteworthy change is that the appointment of the Controller of Hire-Purchase is to be made by the Minister and not by the Yang di-Pertuan Agong as was the case under the repealed section.

The Amendment Act has also made a number of changes to Part VIII of the principal Act which deals with the powers of enforcement of the Controller of Hire-Purchase and his officers. Under section 50(3) of the principal Act the Controller and his officers are authorised to enter "any premises" where such entry is made under a warrant issued by a Magistrate acting under the said section. The Amendment Act has created a new provision,<sup>54</sup> section 51A, to protect the Controller and his officers when acting under such a warrant. It provides that a warrant issued under the Act shall be valid and enforceable notwithstanding any defect,

<sup>52</sup>Section 25, HP(A)A 1992.

<sup>53</sup>Section 3, HP(A)A 1992.

<sup>54</sup>Section 26, HP(A)A 1992.

mistake or omission therein or in the application for such warrant and that any goods or documents seized under such warrant shall be admissible in evidence in any proceedings under the Act.

Another new provision,<sup>55</sup> section 51B, clarifies that an Assistant Controller shall have the power to investigate the commission of any offence under the Act or any regulations made thereunder.

By virtue of section 52 of the principal Act the Controller was empowered in writing to require any owner or dealer to provide any information he may request relating to any hire-purchase agreement or to the goods to which such agreement relates. Section 52 has been amended<sup>56</sup> to extend this power to a "Deputy Controller and any other officer specially authorised in writing by the Controller in that behalf".

A new provision,<sup>57</sup> section 55A, deals with the powers of the court regarding the disposal of goods or documents seized from a person accused of an offence under the Act. The section provides that at the conclusion of the trial the court may order that the goods or documents seized from the person accused may be delivered to the rightful owner regardless of whether or not the person accused is convicted of the offence charged.

Section 56 of the principal Act empowered the Controller, with the approval of the Minister, to compound any offence under the Act or any regulations made thereunder. This section has been substituted<sup>58</sup> by an elaborate new provision. Under a new section 56(1) the Controller, or in his absence, the Deputy Controller may compound any offence which is prescribed to be a compoundable offence by collecting from "the person reasonably suspected" of having committed such offence a sum of money not exceeding such amount as may be prescribed by regulations.

A new section 56(2) provides that upon receipt of the payment under section 56(1) no further proceedings shall be taken against the person alleged to have committed the

<sup>55</sup>*Ibid.*

<sup>56</sup>Section 27, HP(A)A 1992.

<sup>57</sup>Section 28, HP(A)A 1992.

<sup>58</sup>Section 29, HP(A)A 1992.

relevant offence and where possession has been taken of any goods or documents under the Act or any regulations made thereunder in connection with such an offence, the goods or documents may be released, subject to such conditions as may be imposed.

Under a new section 56(3) where any person has compounded an offence under the Act or any regulations made thereunder, evidence of the notice of acceptance of the offer to compound shall, on production to any court, be treated as proof of the commission of the offence by that person and of the matters set out therein. A new section 56(4) makes it clear that the power to compound offences under section 56(1) shall be exercised by the Controller or the Deputy Controller personally.

Finally a new provision,<sup>59</sup> section 56A, provides protection for the Controller, Deputy Controllers and Assistant Controllers and "any other officer duly appointed by the Minister". It provides that no action or prosecution shall be brought or maintained against them for any act ordered or done for the purpose of enforcing the Act. The protection is also extended to a person other than the Controller, Deputy Controller or Assistant Controller where that person acts under the order, direction or instruction of any of the aforesaid officers or of any other officer duly appointed by the Minister. The proviso to the section limits the aforesaid protection to an act done in "good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby".

## 20. Regulations

Section 57(2) (a) - (e) of the principal Act lists some of the matters in respect of which the Minister may make regulations. The Amendment Act adds<sup>60</sup> a new paragraph (f) under which the Minister may:

prescribe the offences under this Act which may be compounded, the amount of such compound and the procedure to be followed in compounding.

<sup>59</sup>Section 30, HP(A)A 1992.

<sup>60</sup>Section 31, HP(A)A 1992.



This addition is necessary in view of the Controller's new powers on the compounding of offences in section 56, mentioned above.

#### **21. Amendments to the Schedules of the principal Act**

The amendments to the First, Second, Fourth and Fifth Schedule to the principal Act were dealt with at an earlier part of this note. It was also noted that the Third Schedule has been removed from the principal Act. The Sixth Schedule is not affected by the Amendment Act and retains its old form.

A significant new development is the creation of a Seventh Schedule.<sup>61</sup> It was pointed out at an earlier part of this note that section 4C(1)(c)(viii) as inserted by the Amendment Act requires every hire-purchase agreement regulated by the Act to state "the annual percentage rate" for terms charges. The formula for the computation of the annual percentage rate is set out in the Seventh Schedule.

#### **Conclusion**

The coming into force of the Hire-Purchase (Amendment) Act is a major landmark in the development of hire-purchase law in Malaysia. As outlined in the preceding pages of this note the Amendment Act makes major and significant changes to hire-purchase law in Malaysia. We have questioned the wisdom of some of the amendments. Our reasons for doing so are indicated in our discussions of the relevant amendments.

The Amendment Act greatly enhances the protection of the hirer. In doing so it does not ignore the interests of owners. In many instances the Amendment Act strengthens the position of owners and provides them with new rights.

In the context of hirer-protection the most significant development must certainly be the inclusion of all consumer goods in the First Schedule. The creation of novel rights for the hirer where he makes an early determination and where goods repossessed are sold by the owner are important and

<sup>61</sup>Section 37, HP(A)A 1992.

major developments. The Amendment Act recognises the fact that effective enforcement of the principal Act is necessary to protect hirers and to curb the malpractices in the hire-purchase industry. To ensure effective enforcement the Amendment Act has strengthened the position of the Controller of Hire-Purchase and his officers and their powers under the principal Act. One may expect that the Controller will be prompted to greater activity because of his increased powers, particularly the simplified and elaborate powers on compounding of offences.

One of the principal defects of the principal Act was its failure to provide a general penal provision for non-compliance by owners of their obligations under the Act. Although the principal Act was based on the Hire-Purchase Acts 1960-65 of New South Wales the Malaysian legislation did not adopt the general penal provision in section 50(1) of the Australian legislation. Another shortcoming of the principal Act was its failure to state the civil remedy available to a hirer for a breach of some of the owner's obligations under the Act. The Amendment Act attempts to overcome these defects by creating criminal and civil sanctions for many of the sections dealing with the owner's obligations. However there still remains a number of provisions dealing with the owner's obligations which are not backed by a civil or criminal sanction. The creation of a general penal provision against owners for non-compliance, similar to the Australian provision mentioned above, would probably be a more effective measure to ensure that they fulfil their statutory obligations under the Act.

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