

BILLS
SUPPLEMENT No. 5

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BILLS SUPPLEMENT

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Bill No. 7

Hire Purchase Bill

2007

ACC. No:.....
CALL No:.....

THE HIRE PURCHASE BILL, 2007

MEMORANDUM.

1. The object of this Bill is to provide for the regulation and registration of hire purchase agreements and the licensing of persons carrying on hire purchase business and for related purposes.
2. Hire purchase denotes a method of buying goods in which the purchaser takes possession of the goods as soon as he or she has paid an initial instalment of the price (a deposit) and obtains ownership of the goods when he or she has paid all the agreed number of subsequent instalments.
3. Uganda does not at present have a distinct piece of legislation governing hire purchase transactions. Consequently, it resorts to the Contract Act Cap 73, the Sale of Goods of Act, Cap 82, (in as far as it is applicable) and the Judicature Act Cap.13 by virtue of s.14, in relation to the common law doctrines of equity, any established and current custom or usage, principles of justice, and good conscience and doctrines of precedents. In relation to the Sale of Goods Act, it applies in situations where the hire purchase agreement is an irrevocable agreement to sell on the part of the owner.
4. Most of these laws have been in existence for at least the last twenty years, and are not adequate to address effectively the issue of secured transactions.
5. The Bill is therefore to provide comprehensively for hire purchase and to fill the vacuum existing in the present law.

6. The Bill defines hire purchase as an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the hirer. The Bill further defines bailment as a delivery of goods or movable personal property by one person to another in trust for the executing of a special object upon or in relation to goods beneficial either to the bailor or bailee or both and upon a contract, express or implied, to perform the trust and carry out the object and either redeliver the goods to the bailor or dispose of the goods in conformity with the purpose of the trust.

7. According to clause 2, the Bill will only apply to hire purchase agreements entered into after the commencement of the Act.

PART II—HIRE PURCHASE AGREEMENTS

8. Part II of the Bill deals with the nature and requirements of a hire purchase agreement. Clause 4 requires a hire purchase agreement to be executed by both the owner i.e. the proposed seller and the hirer and where the hire purchase agreement is supported by a guarantee, the guarantee agreement should be executed by the guarantor. Where a contract of guarantee is not executed as required in clause 4, the agreement is voidable at the instance of the owner. For the protection of the hirer, clause 4 provides that before a hire purchase agreement is executed, the owner shall make to the hirer full disclosure of all the information relevant to the proposed agreement. Failure to do this is punishable by a fine or imprisonment or both.

9. Clause 5 spells out detailed requirements relating to hire purchase agreements. For instance the clause requires that before a hire purchase agreement is entered into in respect of any goods, the owner shall state in writing in the prescribed form the cash price of the goods.

10. The clause renders it impossible for the owner to enforce the hire purchase agreement or the contract of guarantee relating to it unless the requirements in clause 5 are fulfilled. Also under clause 5, the following are key requirements, that—

“(c) the agreement contains a statement of—

- (i) the hire purchase price and 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 is to be paid and the date, or the mode of determining the date upon which each instalment is payable;
 - (iii) a description of the goods sufficient to identify them; and
 - (iv) the date on which the agreement is taken to have commenced.
- (d) the agreement contains a notice in the prescribed form relating to the rights of the hirer which is at least as prominent as the rest of the contents of the agreement;
- (e) a copy of the agreement has been delivered or sent by registered post by the owner to the hirer within six weeks after the date of the agreement or, if the parties agree, the hirer may collect the agreement from the premises of the owner; and
- (f) the first instalment of the hire purchase price has been paid.”

11. Clause 5(4) provides that the hire purchase agreement shall be taken to commence on the date of execution of the agreement.

12. According to the Bill interest rates in relation to hire purchase and rates of rebate on goods shall be determined by market forces.

Clause 7 of the Bill makes provision for certain conditions to be void if included in a hire purchase agreement. These are mainly conditions that militate against the exercise of the rights of the hirer under the hire purchase agreement.

In particular the clause renders void any provision that impedes the right of the hirer to complete the purchase of the goods under clause 10 or the exercise of the right or to own the goods after compliance with all conditions under the agreement (i.e. avoidance of claw back clauses).

13. Clause 8 provides for conditions and warranties to be implied in every hire purchase agreement. One of the conditions is that the owner will have a right to sell the goods at the time when the property in the goods is to pass. Another condition is that the goods will be of satisfactory quality.

PART III—TERMINATION AND COMPLETION OF AGREEMENT

14. Clause 9 provides for termination of the agreement by the hirer. Thus clause 9(1) provides that the hirer may, at any time before the final payment under a hire purchase agreement falls due, terminate the agreement by returning the goods to the owner and giving the owner written notice of termination of the agreement.

15. The clause further provides for the rights of the parties upon termination.

16. Clause 10 provides for completion of purchase of the goods by the hirer. Thus clause 10(1) provides that the hirer under a hire purchase agreement may give notice in writing to the owner of his or her intention to complete the purchase of the goods by paying or tendering to the owner on a specified day, the net balance due to the owner under the agreement, and having given the notice, may complete the purchase accordingly on the day specified. Clause 10(2) defines the net balance due as the balance originally payable under the agreement as the hire purchase price less any amounts, other than the deposit, paid or provided, whether by cash or by other consideration, by or on behalf of the hirer under the agreement

17. Under clause 10(3) the right of the hirer to complete the purchase can be exercised at any time during the continuance of the agreement or within twenty eight days after the owner has taken possession of the goods upon meeting certain prescribed expenses.

PART IV—RECOVERY OF POSSESSION BY OWNER

18. Part IV deals inter alia, with the circumstances in which the owner may or may not recover the goods from the hirer. For instance clause 15 provides that where goods have been hired under a hire purchase agreement and two thirds of the hire purchase price has been paid—

(a) under the agreement or a judgment or otherwise; or

(b) has been tendered by or on behalf of the hirer or a guarantor,

the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by suit.

19. According to clause 15(2) where an owner retakes possession of goods in contravention of subsection (1), the hire purchase agreement, if not previously terminated, shall terminate, and—

(a) the hirer is released from all liability under the agreement and is entitled to recover from the owner by suit all sums paid by the hirer under the agreement or under any security given by him or her in respect of the agreement; and

(b) a guarantor is entitled to recover from the owner by suit, all sums paid by him or her under the contract of guarantee or under any security given by him or her in respect of the agreement.

20. According to clause 16(1) where a suit is instituted under section 15, the owner shall not take any step to enforce payment of any sum due under the hire purchase agreement or under any contract of guarantee relating to it, except by claiming the sum in the suit.

21. Clause 17 provides for the right of the parties where the court in a suit in respect of the hire purchase agreement makes an order postponing the delivery of the goods to the owner.

PART V—LICENSING OF HIRE PURCHASE BUSINESS

22. Part V of the Bill provides for licensing of hire purchase business. Clause 18 prohibits the carrying on after the commencement of the Act of hire purchase except in accordance with the licence issued under the Act subject to criminal penalties for contravention.

Under clause 19 the Minister is to declare the licensing authority by statutory order.

Clause 20 provides for the mode of application for a licence and clause 21 provides for renewal of the licence. Clause 22 provides for appeals against refusal of a licence and clause 23 requires a licenced person to display the licence in the premises where he or she carries on business.

PART VI—MISCELLANEOUS

23. Part VI of the Bill provides for certain miscellaneous matters relating to hire purchase business. For example clause 25 requires the owner to render account where he or she enforces a right to recover possession of the goods from the hirer otherwise than by suit.

24. Clause 27 provides for the hirer requiring information about the hire purchase agreement from the owner concerning payments under the agreement. Clause 28 deals with appropriation of payments where more than one agreement is entered into.

25. Clauses 30 and 31 deal respectively with a situation where the owner or hirer becomes insolvent.

26. Clause 33 creates an offence in respect of a person knowingly giving false information in any proposal form or other document completed for the purpose of entering into a hire purchase agreement.

27. Clause 34 empowers a hirer to transfer his or her interest in the goods to another person with the consent of the owner and clause 35 prohibits the hirer from taking the goods out of Uganda without the owner's consent.

28. Clause 36 empowers the Minister to make regulations for giving better effect to the Act. The clause in particular enables the Minister to prescribe the conditions and warranties applicable to the hirer of second hand goods.

29. Finally, clause 38 requires companies conducting hire purchase business before the Act comes into force to obtain a licence within three months after the coming into force of the Act or wind up the hire purchase business.

HON. (DR) E. KHIDDU MAKUBUYA (MP),
Attorney General and Minister of Justice and Constitutional Affairs.

ARRANGEMENT OF CLAUSES.

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Clause.

1. Commencement.
2. Application.
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PART II—HIRE PURCHASE AGREEMENTS.

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11. Owner not to engage in deceptive conduct.
12. Communication between the parties.
13. Owner not to disclose to third party information in connection with payment or repossession.
14. Owner not to charge late charges greater than debt.
15. Recovery of possession where two thirds of price paid.
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PART V—LICENSING OF HIRE PURCHASE BUSINESS.

18. Licensing of hire purchase business.
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Clause.

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PART VI—MISCELLANEOUS.

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SCHEDULE

Currency point.

A Bill for an Act.

Entitled.

THE HIRE PURCHASE ACT, 2007

An Act to provide for the regulation and registration of hire purchase agreements and the licensing of persons carrying on hire purchase business and for related purposes.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Commencement.

This Act shall come into force on a date appointed by the Minister by statutory instrument.

2. Application.

This Act applies to hire purchase agreements entered into after the coming into force of this Act.

3. Interpretation.

(1) In this Act, except where the context otherwise requires—

“bailment” means a delivery of goods or movable personal property by one person to another in trust for the executing of a special object upon or in relation to goods beneficial either to the bailor or bailee or both and upon a contract, express or implied, to perform the trust and carry out the object and either redeliver the goods to the bailor or dispose of the goods in conformity with the purpose of the trust;

“cash price” means the price at which a creditor would have sold the goods to the consumer for cash on the date of the hire purchase agreement;

“contract of guarantee”, in relation to a hire purchase agreement, means a written contract, made at the express or implied request of the hirer, to guarantee the performance of the hirer’s obligations under the hire purchase agreement, and “guarantor” shall be construed accordingly;

“currency point” has the meaning assigned to it in the Schedule;

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

“goods” includes all chattels, personal, other than things in action and money and all emblements, industrial growing crops and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale;

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the hirer;

“hire purchase business” means a business of entering into hire purchase agreements, whatever the hire purchase price under any agreement;

“hire purchase price” means the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of goods to which the agreement relates, including the cash price, interest, financial charges, and a deposit or other initial payment;

“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 operation of law;

“licence” means a licence issued to carry on hire purchase business under this Act;

“licensed person” means a person licensed under Part V to carry on hire purchase business, and includes a company to which 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;

“Minister” means the Minister responsible for trade;

“owner” means the person who hires 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 operation of law;

“satisfactory quality” means the state and condition of goods; and the following, among others, are aspects of the quality of goods—

- (a) fitness for all the purposes for which the goods of the kind in question are commonly supplied;
- (b) appearance and finish;
- (c) safety; and
- (d) durability;

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

(2) Where by virtue of two or more agreements none of which by itself constitutes a hire purchase agreement there is a bailment of goods and either the bailee may buy the goods or the property in them will or may pass to the bailee, the agreement shall be treated for the purposes of this Act as a single agreement made at the time when the last of those agreements is made.

(3) A reference in this Act to taking possession of goods hired under a hire purchase agreement does not include a reference to the owner taking possession as a result of the hirer voluntarily returning the goods, but includes a reference to the owner taking possession under the authority of an order of a court, and a return of goods after a notice has been served on the hirer under this Act.

PART II—HIRE PURCHASE AGREEMENTS.

4. Execution of hire purchase agreement.

(1) A hire purchase agreement shall be executed by the owner and hirer.

(2) A contract of guarantee relating to a hire purchase agreement shall be executed by a guarantor.

(3) Where a contract of guarantee relating to a hire purchase agreement is not executed by a guarantor as required by subsection (2), the agreement is voidable at the instance of the owner.

(4) Before a hire purchase agreement is executed, the owner and the hirer shall make full disclosure of all the information relevant to the proposed agreement.

(5) A person who—

- (a) fails without reasonable cause to give the information referred to in subsection (4); or
- (b) gives information which is false in any material particular, and which he or she knows to be false or does not believe to be true,

commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

5. Requirements relating to hire purchase agreements.

(1) Before a hire purchase agreement is entered into in respect of any goods, the owner shall state in writing, in the prescribed form, to the prospective hirer, the cash price of the goods.

(2) Subsection (1) shall be taken to be sufficiently complied with, if—

- (a) the hirer has inspected the goods or similar goods, and at the time of his or her inspection, tickets or labels were attached to or displayed with the goods, which clearly stated the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised in the goods; or
- (b) 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 comprised in the goods.

(3) An owner is not entitled to enforce a hire purchase agreement or a contract of guarantee relating to it, or a 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 relating to the hire purchase agreement against the hirer or guarantor, has effect unless subsection (1) has been complied with, and—

- (a) the agreement is executed by or on behalf of all other parties to the agreement; and
- (b) the guarantee relating to the hire purchase agreement is executed by a guarantor;
- (c) the agreement contains a statement of—
 - (i) the hire purchase price and 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 is to be paid and the date, or the mode of determining the date upon which each instalment is payable;
 - (iii) a description of the goods sufficient to identify them; and
 - (iv) the date on which the agreement is taken to have commenced.
- (d) the agreement contains a notice in the prescribed form relating to the rights of the hirer which is at least as prominent as the rest of the contents of the agreement;
- (e) a copy of the agreement has been delivered or sent by registered post by the owner to the hirer within six weeks after the date of the agreement or, if the parties agree, the hirer may collect the agreement from the premises of the owner; and
- (f) the first instalment of the hire purchase price has been paid.

(4) For the purposes of subsection (3)(c), (iv) the agreement shall be taken to commence on the date of execution of the agreement.

(5) If the court is satisfied in any suit that a failure to comply with the requirement specified in subsection (1), or any of the requirements specified in subsection (3)(b), (c) and (d), has not prejudiced the hirer, and that it would be just to dispense with that requirement, the court may, subject to any conditions imposed by the court, dispense with that requirement for the purposes of the suit.

6. Rebates and interest rate

Interest rates in relation to hire purchase and rates of rebate on goods under a hire purchase agreement shall be determined by market forces.

7. Avoidance of certain provisions in a hire purchase agreement.

(1) A provision in a hire purchase agreement by which—

- (a) the right conferred on a hirer by section 9 to terminate the hire purchase agreement is excluded or restricted;
- (b) any liability beyond that imposed by section 9 is imposed on a hirer by reason of the termination of the hire purchase agreement by him or her under that section;
- (c) a hirer after the termination of the hire purchase agreement or the bailment in any manner, is subject to liability which exceeds the liability to which he or she would have been subject if the agreement had been terminated by him or her under this Act;
- (d) a person acting on behalf of an owner in connection with the formation or conclusion of a hire purchase agreement is treated as, or taken to be the agent of the hirer;
- (e) an owner is relieved from liability for the acts or defaults of a person acting on his or her behalf in connection with the formation or conclusion of a hire purchase agreement;
- (f) the whole of the hirer's wage is assigned as periodic payment for the hired property;

(g) the owner or an agent of the owner is authorised to enter the hirer's premises without the knowledge or express authority of the hirer for the purposes of the repossession of the hired property; or

(h) a hirer is impeded from completing the purchase of the hired goods under section 10,

is void.

(2) Notwithstanding subsection (1), an owner or a person acting on his or her behalf may enter upon the premises where the goods are kept for the purposes of inspecting the goods hired during the course of the contract and for the purposes of taking possession of the goods at such intervals and times and on giving such notice in writing as may be agreed upon between the parties.

8. Implied conditions and warranties.

(1) In every hire purchase agreement, there shall be implied—

(a) a condition that the owner will have a right to sell the goods at the time when the property is to pass;

(b) a condition that the goods will be of satisfactory quality;

(c) a warranty that the hirer shall have and enjoy quiet possession of goods as long as there is no default;

(d) a warranty that the goods will be free from any charge or encumbrance in favour of a third party at the time when the property is to pass; and

(e) a condition that the hirer shall not take the goods out of Uganda without the consent of the owner.

(2) A condition referred to in subsection (1) shall not be implied, by virtue of that subsection, as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made or, if the hirer has examined the goods or a sample of them, as regards defects which the examination revealed or ought to have revealed.

(3) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be implied a condition that the goods will be reasonably fit for that purpose.

(4) The conditions and warranties set out in subsection (1) shall be implied notwithstanding any agreement to the contrary; and the owner is not entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection (3) unless he or she proves that before the agreement was made, the provision was brought to the notice of the hirer and its effect made clear to him or her.

(5) Nothing in this section excludes or limits the operation of any other law by which any condition or warranty is to be implied in an agreement.

PART III—TERMINATION AND COMPLETION OF HIRE PURCHASE AGREEMENT.

9. Termination by hirer.

(1) The hirer may, at any time before the final payment under a hire purchase agreement falls due, terminate the agreement by returning the goods to the owner and giving the owner a written notice of termination of the agreement.

(2) Where the hirer gives notice under subsection (1), the hirer is liable, without prejudice to any liability which accrues before the termination, to pay—

(a) the amount if any, by which two thirds of the hire purchase price exceeds the total of the sums paid and the sums due in respect of the hire purchase price immediately before the termination; or

(b) such lesser amount as may be specified in the agreement.

(3) Where under the provision for termination in the agreement, the hirer is—

- (a) responsible for taking reasonable care of the goods;
- (b) responsible for the maintenance and servicing of the goods;
or
- (c) liable for any loss or damage to the goods,

and the hirer has failed to fulfill any of the obligations under this section, the hirer shall pay damages for failure to fulfill that obligation.

(4) A hirer who returns goods under subsection (1) shall return them at his or her own expense to the premises from which they were originally supplied to him or her or to such other place as the owner may direct.

(5) The owner shall reimburse the hirer for any additional expense incurred in returning the goods to premises other than those from which they were originally supplied.

(6) Nothing in this section prejudices any legal right of a hirer to terminate a hire purchase agreement otherwise than by virtue of this section.

10. Completion of purchase of goods by hirer.

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

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

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

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

PART IV—RECOVERY OF POSSESSION BY OWNER.

11. Owner not to engage in deceptive conduct.

(1) An owner shall not engage in any unlawful or deceptive conduct or make any false or misleading statement regarding collection of any payment by the hirer or the repossession of any hired property.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

12. Communication between the parties.

Except in the case of an agreement to the contrary, the owner shall communicate to the hirer at the hirer's place of abode or any other location agreed upon, in connection with the hire purchase agreement only between the hours of six o'clock in the morning and six o'clock in the afternoon.

13. Owner not to disclose to third party information in connection with payment or repossession.

(1) An owner shall not disclose to a person other than the hirer, the hirer's agent or the owner's agent information in connection with the collection of the periodical payments or repossession of hired goods.

(2) Subsection (1) does not apply where—

- (a) the disclosure is necessary to get information concerning the location of the hirer or the hired goods;
- (b) the hirer has given prior consent to the owner to that effect;
- (c) express permission to that effect has been given by a court of competent jurisdiction;
- (d) reasonably necessary to effectuate a post judgment judicial remedy; or
- (e) it is required by law.

14. Owner not to charge late charges greater than debt.

An owner shall not as a result of a default, charge late charges greater than the amount of the remaining balance.

15. Recovery of possession where two-thirds of price paid.

(1) Where goods have been hired under a hire purchase agreement and two thirds of the hire purchase price has been paid—

- (a) under the agreement or a judgment or otherwise; or
- (b) has been tendered by or on behalf of the hirer or a guarantor,

the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by suit.

(2) Where an owner retakes possession of goods in contravention of subsection (1), the hire purchase agreement, if not previously terminated, shall terminate, and—

- (a) the hirer is released from all liability under the agreement and is entitled to recover from the owner by suit all sums paid by the hirer under the agreement or under any security given by him or her in respect of the agreement; and
- (b) a guarantor is entitled to recover from the owner by suit, all sums paid by him or her under the contract of guarantee or under any security given by him or her in respect of the agreement.

(3) This section does not apply where the hirer has terminated the agreement or the bailment by virtue of any right vested in him or her.

16. Provisions where a suit is instituted.

(1) Where a suit is instituted under section 15, the owner shall not take any step to enforce payment of any sum due under the hire purchase agreement or under any contract of guarantee relating to it, except by claiming the sum in the suit.

(2) Subject to rules of court, all the parties to the agreement and any guarantor shall be made parties to the suit.

(3) Pending the hearing of the suit—

- (a) the court may, in addition to any other powers the court may have in the matter, make, upon the application of the owner, such orders as the court thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the use of the goods or giving directions as to their custody; and
- (b) without prejudice to the powers of the court under paragraph (a), where two or more instalments of the hire purchase price are due and unpaid the owner—
 - (i) may remove the whole or any part of the goods to any premises under his or her control for the purpose of protecting them from damage or depreciation and retain them there pending the hearing of the suit; and

(ii) is liable to the hirer for any damage or loss which may be caused to the goods after the removal,

but the owner shall not be taken to have repossessed the goods for the purposes of this Act or of the hire purchase agreement by reason of the removal.

(4) On the hearing of the suit the court may, without prejudice to any other power, make an order—

- (a) for the delivery of all the goods to the owner;
- (b) for the delivery of all the goods to the owner, and postpone the operation of the order on condition that the hirer or any guarantor pays the unpaid balance of the hire purchase price at such times and in such amounts and fulfils such other conditions as the court thinks just; or
- (c) for the 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) An order shall not be made under subsection (4)(b) unless the hirer satisfies the court that the goods are in his or her possession or control at the time when the order is made

(6) An order shall not be made under subsection (4)(c) transferring to the hirer the owner's title to a part of the goods, unless the court is satisfied that the amount which the hirer has paid towards the hire 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.

(7) Where the court makes an order under subsection (4) for delivery of the whole or part of the goods to the owner, it shall, in that order, confer on the owner a right of entry on any premises where the goods may be for the purpose of obtaining possession of the goods.

(8) Where damages are awarded against the owner in the suit, the court may treat the hirer as having paid towards the hire 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 remit the damages accordingly.

(9) Where at any time before the hearing of the suit, the owner has recovered possession of a part of the goods, the references in subsection (4) to all the goods shall be construed as references to all the goods which the owner has not recovered, and, if the parties have not agreed upon an adjustment of the hire purchase price in respect of the goods recovered, the court may, for the purposes of subsection (4)(b) and (c), make a reduction of the hire purchase price and of the unpaid balance of it as it thinks just.

(10) Where an owner has recovered part of the goods hired under the hire purchase agreement, and recovery was effected in contravention of section 15, this section shall not apply in relation to a suit by the owner to recover the remainder of the goods.

(11) In this section a reference to an order for delivery in relation to goods means, an order for the delivery of the goods to the owner without giving the hirer an option to pay their value, and a reference to an the price in relation to goods, means such part of the hire purchase price as is assigned to those goods in the agreement, or if no assignment is made, such part of the hire purchase price as the court may determine.

17. Where order for delivery of goods is postponed.

(1) Where the operation of an order for the delivery of goods to the owner is postponed the hirer shall be taken to be bailee of the goods under and on the terms of the hire purchase agreement.

(2) Where subsection (1) applies—

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

(b) the court may make further modifications of the terms of the hire purchase agreement, and of any contract of guarantee relating to it, as to payment as the court considers necessary, having regard to the variation of the terms of payment.

(3) If, while the operation of an order for the delivery of the goods to the owner is postponed, the hirer or a guarantor fails to comply with any conditions of the postponement, or with any term of the hire purchase agreement as modified by the court, or wrongfully disposes of the goods, the owner shall not take any civil proceedings against the hirer or guarantor otherwise than by making an application to the court by which the order was made.

(4) In the case of a breach of a condition relating to the payment of the unpaid balance of the hire purchase price, it is not necessary for the owner to apply to the court for leave to execute the order unless the court directs that application to be made.

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

(6) The court may, at any time during the postponement of the operation of an order for delivery of goods to the owner—

(a) vary the conditions of the postponement, and make such further modification of the hire purchase agreement and of any contract of guarantee relating to it 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 for the 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.

PART V—LICENSING OF HIRE PURCHASE BUSINESS.

18. Licensing of hire purchase business.

(1) A person shall not, after the coming into force of this Act, carry on a hire purchase business, except under and in accordance with the terms of a licence issued under this Act.

(2) Only a company registered in Uganda is qualified to be licensed to carry on hire purchase business.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction, to a fine not exceeding one hundred and fifty currency points or imprisonment not exceeding one year or both.

19. Licensing authority.

The Minister shall by statutory order, declare the licensing authority for the purposes of this Act.

20. Application for a licence.

(1) A person shall apply for a licence in the prescribed manner, and the licensing authority shall either grant a licence without conditions or subject to such conditions as it may think fit, or refuse to grant a licence.

(2) Where a licensing authority refuses to grant a licence or imposes conditions in a licence, it shall give to the applicant the reasons in writing for its action.

(3) The fees to be paid for the issue of a licence shall be as prescribed by regulations made by the Minister under section 36.

(4) A licence shall be issued so as to expire on the 31st day of December in the year in which it is issued.

(5) In considering an application for a licence, the licensing authority shall take into account the financial condition of the applicant and the manner in which the applicant has conducted any hire purchase business then or formerly carried on by the applicant, and the applicant shall provide such information as the authority may require to enable the licensing authority to take a decision.

21. Renewal of licence.

Where a licensed person applies for renewal of a licence before the expiry of the existing licence, the person may continue carrying on hire purchase business until the licensing authority has decided whether or not to renew the licence, even though the decision has not been made by the 31st day of December of the year of the licence, in which the licence was issued.

22. Appeals.

(1) A person who is refused a licence may appeal to the Minister within thirty days after the date of the refusal.

(2) On an appeal to the Minister under subsection (1), the Minister may confirm, reverse or vary the decision of the licensing authority.

(3) Where the Minister's decision amounts to a refusal to grant a licence the Minister shall give reasons in writing for the refusal.

(4) A person aggrieved by the decision of the Minister may appeal to the High Court.

(5) Where a person appeals under subsection (1), the person may, notwithstanding section 18, continue to carry on hire purchase business until the appeal is decided.

23. Display of licence.

(1) A licensed person under this Act shall ensure that the licence or a copy of the licence is at all times conspicuously displayed in or on every premises where the person carries on business.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding twenty five currency points.

PART VI—MISCELLANEOUS.

24. Successive agreements between same parties.

Where goods have been hired under a hire purchase agreement and at any time after two thirds of the hire purchase price has been paid or tendered the owner makes a further hire purchase agreement with the hirer comprising the same goods, sections 16 and 17 apply in relation to each subsequent agreement from the time that particular agreement comes into force.

25. Owner to account for proceedings of sale.

Where the owner enforces a right to recover possession of the goods from the hirer otherwise than by suit, he or she shall—

- (a) sell the goods at the best price reasonably obtainable as soon as is reasonably practicable; and
- (b) account for and pay to the hirer that part of the proceeds of sale which exceeds the sum of the unpaid balance of the hire purchase price and the expenses necessarily incurred by the owner in recovering possession of and selling the goods.

26. Hirer's refusal to surrender goods not conversion.

If, while the enforcement by an owner of a right to receive possession of goods from a hirer is restricted by this Act, the hirer refuses to give up possession of goods to the owner, the hirer is not, by reason only of the refusal, liable to the owner for conversion of the goods.

27. Hirer may require information.

(1) Where a hirer delivers or sends by registered post to the owner a written request for information and tenders to the owner a sum of one half of a currency point for expenses, the owner shall, within fourteen days after the request and tender are received by him or her, deliver or send by registered post to the hirer a statement signed by or on behalf of the owner indicating—

(a) the total of the payments made under the agreement by or on behalf of the hirer, and the date of each payment;

(b) the total amount which is to become due under the agreement, the amount of each instalment which is to become due and the date, or the mode of determining the date, upon which it is to become due.

(2) Where the owner fails without reasonable cause to comply with a request made under subsection (1), then while the default continues—

(a) no person is entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, and the owner is not entitled to enforce any right to recover possession of the goods from the hirer; and

(b) no security given by the hirer in respect of money payable under the agreement or given by a guarantor in respect of money payable under a contract of guarantee is enforceable by any holder of the security against the hirer or the guarantor, as the case may be.

(3) Where the default referred to in subsection (2) continues for a period exceeding thirty days, the owner commits an offence and is liable on conviction to a fine not exceeding ten currency points.

28. Appropriation of payment where more than one agreement exists.

(1) A hirer who is liable to make payments in respect of two or more hire purchase agreements to the same owner is entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum paid by the hirer in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he or she thinks fit.

(2) Where the hirer fails to make any appropriation under subsection (1), the owner may appropriate the sum paid by the hirer towards the new agreements in the order in which the agreements were entered into.

29. Limitation of enforcement of agreement.

An owner is not entitled, by reason of the hirer's failure to carry out any obligation under a hire purchase agreement, to enforce—

(a) a provision in the agreement for the acceleration of the payment of an instalment, unless an instalment, or some part of an instalment which is not less than ten percent of the hire purchase price, or two or more instalments or part of instalments which altogether are not less than five percent of the hire purchase price, are due and unpaid; or

(b) a provision in the agreement for the payment of an amount of damages, or for forfeiture or penalty, or for the acceleration of the payment of an instalment,

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

30. Insolvency of owner.

(1) Where the owner is adjudged insolvent or is in liquidation, a hire purchase agreement entered into by the insolvent or a company in liquidation shall remain in full force and effect and shall be binding on the liquidator, as the case may be, but without prejudice to the right of the liquidator to disclaim.

(2) This section does not affect the powers of the court to set aside any disposition of property made by way of undue preference.

31. Insolvency of hirer.

(1) Where a hirer is adjudged insolvent, the rights and duties which are the subject of the hire purchase agreement entered into by the hirer shall vest in his or her trustee, notwithstanding the terms of the agreement, but without prejudice to the trustee's right to disclaim.

(2) Where the goods are used by the trustee on behalf of the hirer's estate, the trustee shall pay to the owner, as a cost in the administration of the estate, each instalment in respect of the purchase price which becomes due under the agreement during the period the goods are so used.

32. Service of notice.

(1) A notice or document required or authorised to be served on or given to an owner or hirer under this Act may be served or given—

- (a) by delivering it to him or her personally;
- (b) by leaving it at his or her place of abode or business with some other person who appears to be a resident or employed there and who appears to be over the age of eighteen years; or
- (c) by posting it addressed to him or her at his or her last known place of abode or business in Uganda.

(2) The affidavit or oral evidence of an owner or his or her servant or agent as to the delivery or posting of any notice or document required or authorised to be served under this Act shall be admissible as *prima facie* evidence of the due service of the document or notice, if the deponent swears to the facts necessary to prove due service either from his or her own knowledge or to the best of his or her information and belief based on and verified by the records of the owner.

33. False information.

A person who knowingly gives false information in any proposal form or other document completed for the purpose of entering into a hire purchase agreement commits an offence and is liable, on conviction, to a fine not exceeding twenty five currency points or imprisonment not exceeding six months, or both .

34. Transfer of hirer's interest in hired goods

The hirer may only transfer his or her interest in goods under a hire purchase agreement with the consent of the owner.

35. Penalty for hirer taking goods out of Uganda without consent of owner

A hirer who takes goods obtained by him or her under a hire purchase agreement out of Uganda without the consent of the owner commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

36. Regulations.

(1) The Minister may by statutory instrument, make regulations generally for the better carrying out of any of the provisions or purposes of this Act.

(2) Without prejudice to the general effect of subsection (1), regulations made under that subsection may provide for all or any of the following matters—

- (a) anything which is to be or may be prescribed under this Act;
- (b) the form of hire purchase agreements;
- (c) the form of notices relating to hire purchase agreements; and
- (d) prescribing the fees payable for anything which may be done under this Act;

- (e) the registration in appropriate cases of hire purchase agreements;
- (f) prescribing the conditions and warranties to apply to the hire of second hand goods under this Act;
- (g) prescribing in relation to the contravention of any of the regulations a penalty not exceeding a fine of fifty currency points or imprisonment not exceeding twelve months, or both;

37. Power of Minister to amend Schedule.

The Minister may, by statutory instrument, with the approval of Cabinet, amend the Schedule.

38. Persons carrying on hire purchase business before commencement of Act

(1) Where a person who carries on hire purchase business immediately before the commencement of this Act, applies and is refused a licence, the person may, notwithstanding section 18, continue to carry on hire purchase business so long and so far only as is necessary to complete existing hire purchase agreements and to wind up the business, and shall not enter into any new hire purchase agreement except under a licence granted under this Act.

(2) Where at the commencement of this Act a person is carrying on a hire purchase business, the person shall, unless he or she decides to wind up the business, apply for a licence within three months after the coming in force of this Act.

(3) Where a person described in subsection (2) does not apply for a licence under that subsection, the person shall, after the expiry of the period of three months referred to in that subsection, cease to carry on the hire purchase business unless licensed under this Act.

CURRENCY POINT.

A currency point is equivalent to twenty thousand Uganda shillings.