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CONSTITUTION OF BRUNEI DARUSSALAM
{Order under Article 83(3)}

HIRE-PURCHASE ORDER, 2006

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

HIRE-PURCHASE ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I

PRELIMINARY

Citation, long title and application.

1. (1) This Order may be cited as the Hire-Purchase Order, 2006.

(2) The long title of this Order is "An Order to regulate the form and contents of certain hire-purchase agreements, the rights and duties of parties to such agreements and for matters connected therewith".

(3) This Order shall apply only in respect of hire-purchase agreements relating to the goods specified in the First Schedule.

(4) This Order shall apply only to hire-purchase agreements entered into after the commencement of this Order.

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

"action" includes counterclaim and set-off;

"cash" includes a cheque drawn on a banker;

"contract of guarantee" means, in relation to any hire-purchase agreement, a contract made at the request, expressed or implied, of the hirer to guarantee the performance of the hirer's obligations under the hire-purchase agreement, but does not include the dealer or a person engaged, at the time of giving of the guarantee, in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

"court" means a Court of a Magistrate;

"dealer" means a person, not being the hirer or the owner or a servant of the owner, by whom or on whose behalf negotiations leading to the making of a hire-purchase agreement with the owner were carried out or by whom or on whose behalf the transaction leading to a hire-purchase agreement with the owner was arranged;

"goods" includes any replacement or renewal by the hirer of any part or parts thereof and any accessories added or additions made thereto by the hirer during the period of the hiring;

"guarantor" means a person who has guaranteed the performance by a hirer of all or any of his obligations under a hire-purchase agreement, but does not include the dealer or a person engaged, at the time of the giving of the guarantee, in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

"hire-purchase agreement" includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent, hire or otherwise), but does not include any agreement —

(a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or

(b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the 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, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"hirer" means the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the rights or liabilities of the hirer under the agreement have passed by assignment or by operation of law;

"Minister" means the Minister of Finance;

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

"statutory rebate" —

(a) in relation to terms charges, means the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); and

(b) in relation to insurance, means the sum of the amount of premium paid in respect of —

- (i) any annual period not yet commenced; and
- (ii) the current annual period less the amount of premium which would have been paid at the insurer's short period rates for the period which the policy has been in force provided no claim has arisen during this period;

"third-party insurance" means any insurance in relation to liability in respect of death or bodily injury caused by or arising out of the use of a motor vehicle, being insurance required by law;

"vehicle registration fees" means any amount to be provided under a hire-purchase agreement by the owner for payment by or on behalf of the hirer under this Order in connection with the registration and use of a motor vehicle, including any amount payable for third-party insurance.

(2) Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of this Order, be deemed to be a payment of that part of the hire-purchase price.

(3) Where, by virtue of 2 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 the goods will or may pass to the bailee, the agreements shall, for the purposes of this Order, be treated as a single hire-purchase agreement made at the time when the last agreement was made.

(4) The court shall have jurisdiction to try any action or proceeding arising out of or in relation to a hire-purchase agreement to which this Order applies, including an action for an injunction and an action to rescind a contract,

notwithstanding that apart from this subsection the court would have no jurisdiction to do so.

PART II

FORM AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

Requirements relating to hire-purchase agreements.

3. (1) Before a hire-purchase agreement is entered into in respect of any goods, the owner shall give or cause to be given to the prospective hirer a written statement duly completed in accordance with the form set out in the Second Schedule.

(2) Where a hire-purchase agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, subsection (1) shall be deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was signed.

(3) Every hire-purchase agreement –

(a) shall be in writing and in the English or Malay language;

(b) shall be signed by or on behalf of the hirer and all other parties to the agreement;

(c) shall –

(i) specify a date on which the hiring shall be deemed to have commenced;

(ii) specify the number of instalments to be paid under the agreement by the hirer;

(iii) specify the amounts of each of these instalments and the person to whom and the place at which the payments of these instalments are to be made;

(iv) specify the time for the payment of each of those instalments;

(v) contain a description of the goods sufficient to identify them;

(d) shall, where any part of the consideration is or is to be provided otherwise than in cash, contain a description of that part of the consideration; and

(e) shall set out in a tabular form —

- (i) the price at which at the time of signing the agreement the hirer might have purchased the goods for cash (referred to in this Order and to be described in the agreement as cash price);
- (ii) the amount paid or provided by way of deposit (referred to in this Order and to be described in the agreement as deposit) showing separately the amount paid in cash and the amount provided by any consideration other than cash;
- (iii) any amount (included in the total amount) payable to cover the expenses of delivering the goods or any of them or to the order of the hirer (referred to in this Order and to be described in the agreement as freight);
- (iv) any amount (included in the total amount) payable to cover vehicle registration fees in respect of the goods (to be described in the agreement as vehicle registration fees);
- (v) any amount (included in the total amount) payable for insurance in respect of ~~the~~ goods or any of them;
- (vi) the total of the amounts referred to in sub-paragraphs (i), (iii), (iv) and (v) less the deposit;
- (vii) the amount of any other charges included in the total amount payable (referred to in this Order and to be described in the agreement as terms charges);
- (viii) the annual percentage rate for terms charges which shall be calculated in accordance with the formula set out in the Third Schedule;
- (ix) the total of the amounts referred to in sub-paragraphs (vi) and (vii) (referred to in this Order as the balance originally payable under the agreement); and
- (x) the total amount payable.

(4) An owner who enters into a hire-purchase agreement that does not comply with subsection (3) shall be guilty of an offence.

Copy of documents to be served on hirer.

4. (1) The owner shall serve or cause to be served on the hirer within 14 days after the making of a hire-purchase agreement —

(a) a copy of the agreement;

(b) a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms prescribed in the Fourth Schedule.

(2) Where any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance in respect of the goods, the owner shall serve or cause to be served on the hirer within 7 days of receipt of the policy a copy of the policy or statement in writing setting out the terms, conditions and exclusions of the policy that affect the rights of the hirer.

Hire-purchase agreements which are not enforceable.

5. (1) A hire-purchase agreement that is not in writing shall not be enforceable by the owner.

(2) An owner shall not be entitled to enforce a hire-purchase agreement or any contract of guarantee relating thereto or any right to recover the goods from the hirer, and no security given by the hirer in respect of money payable under the hire-purchase agreement or given by a guarantor in respect of money payable under such a contract of guarantee shall be enforceable against the hirer or guarantor by any holder thereof, unless the requirements set out in paragraphs (b), (c), (d) and (e) of subsection (3) of section 3 and in section 4 have been complied with.

(3) Notwithstanding subsection (2), where the court is satisfied that —

(a) a failure to comply with any of the requirements set out in sections 3 and 4 has not prejudiced the hirer; and

(b) it would be just and equitable to dispense with such of the requirements mentioned in paragraph (a),

the court may, subject to any condition that it thinks fit to impose, dispense with those requirements for the purpose of the action.

PART III

PROTECTION OF HIRERS AND GUARANTORS

Warranties and conditions

Conditions and warranties to be implied in every hire-purchase agreement.

6. (1) In every hire-purchase agreement there shall be —

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

(b) an implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass; and

(c) an implied warranty that the goods shall be free from any charge or encumbrance created by the owner in favour of any third party at the time when the property is to pass.

(2) In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality, but such a condition shall not be implied —

(a) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed; and

(b) if the goods are second-hand goods and the agreement contains a statement to the effect that —

(i) the goods are second-hand; and

(ii) all conditions and warranties as to quality are expressly negatived,

and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

(3) Where the hirer expressly or by implication makes known to the owner or the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose, but such a condition shall not be implied if the goods are second-hand goods and the agreement contains a statement to the effect that —

(a) the goods are second-hand; and

(b) all conditions and warranties of fitness and suitability are expressly negated,

and the owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.

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

Liability of owner and person acting on his behalf for misrepresentation.

7. (1) Every representation, warranty or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or the dealer or any person acting on behalf of the owner or the dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer —

(a) as against the owner, the same right to rescind the agreements as the hirer would have had if the representation, warranty or statement had been by an agent of the owner; and

(b) as against the person who made the representation, warranty or statement, and any person on whose behalf the person who made the representation, warranty or statement was acting in making it, the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty or statement or the person on whose behalf the person who made the representation, warranty or statement was acting, as the case may be, as a result of the negotiations.

(2) Every covenant, condition or term in any hire-purchase agreement or other document purporting to exclude, limit or modify the operation of subsection (1) or to preclude any right of action or any defence based on or arising out of any such representation, warranty or statement shall be void.

(3) Without prejudice to any other rights or remedies to which an owner may be entitled, an owner shall be entitled to be indemnified —

(a) by the person who made the representation, warranty or statement; and

(b) by any person on whose behalf the representation, warranty or statement was made against any damage suffered by the owner as a result of any such representation, warranty or statement.

PART IV

HIRERS

Statutory rights of hirers

Duty of owners to supply documents and information.

8. (1) An owner shall, within 14 days of the receipt thereof, comply with a written request made to him by a hirer, at any time before final payment has been made, whereby the hirer requires either a copy of the hire-purchase agreement between the parties or a statement signed by the owner or his agent 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, or both such copy of the agreement and the statement as aforesaid.

(2) Notwithstanding subsection (1), an owner need not comply with such a request —

(a) if he has sent the hirer the document requested within a period of 3 months immediately preceding the request; or

(b) unless the request is accompanied by a payment of \$10 if the hirer makes a second or subsequent request for a copy of the hire-purchase agreement between the parties after the owner has previously complied with such a request.

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

(a) the owner shall not be entitled to enforce —

(i) the agreement against the hirer;

(ii) any right to recover the goods from the hirer; or

(iii) any contract of guarantee relating to the agreement; or

(b) any 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 relating to the agreement shall not be enforceable against the hirer or the guarantor by any holder thereof.

(4) If the default continues for a period of one month, the owner shall be guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Appropriation of payments made in hire-purchase agreements.

9. (1) A hirer who is liable to make payments in respect of 2 or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to require the owner to appropriate the sum so paid by him 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 2 or more of the agreements in such proportions as he thinks fit.

(2) If the hirer fails to make any such appropriation as mentioned in subsection (1), the payment shall by virtue of this section be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

Power of court to allow goods to be removed.

10. Where, by virtue of a hire-purchase agreement, it is the duty of a hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place and the owner fails or refuses to give his consent to the request of the hirer for approval to remove the goods from the place, the court may, on the application of the hirer, make an order approving the removal of the goods to some other place which place shall, for the purposes of the agreement, be substituted for the place mentioned in the agreement:

Provided that no order shall be made under this section if the owner satisfies the court that he had good reason for failing or refusing to give his consent.

Assignments of rights etc. under hire-purchase agreement.

11. (1) The right, title and interest of a hirer under a hire-purchase agreement may be assigned with the consent of the owner, or if his consent is unreasonably withheld, without his consent.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to such an assignment as is mentioned in subsection (1) and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where, at the request of a hirer under a hire-purchase agreement, the owner fails or refuses to give his consent to an assignment by the hirer of his right, title and interest under the agreement, the hirer may apply to a court for an order declaring that the consent of the owner to that assignment has unreasonably been withheld, and where such an order is made that consent shall be deemed to be unreasonably withheld.

(4) As a condition of granting consent to an assignment of the right, title and interest of the hirer under a hire-purchase agreement, the owner may stipulate that all defaults under the agreement shall be made good and may require the hirer and assignee —

(a) to execute and deliver to the owner an assignment in a form approved by the owner whereby, without prejudicing or affecting the continuing personal liability of the hirer in those respects, the assignee agrees with the owner to be personally liable to pay the instalments remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of those liabilities; and

(b) to pay to the owner any reasonable costs incurred by the owner (including legal expenses) in preparing, drawing, stamping or registering the assignment agreement or counterparts.

Passing of rights etc. by operation of law.

12. The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the personal representative of the hirer and if the hirer is a company the liquidator may exercise the same right under the agreement as the company, but nothing in this section shall relieve any personal representative or liquidator from compliance with the provisions of the agreement:

Provided that in the case of the death of a Muslim hirer, his right, title and interest shall pass to his heirs according to *Hukum Syara'* who shall comply with the provisions of the agreement.

Early completion of agreement.

13. (1) The hirer under a hire-purchase agreement may, if he has given notice in writing to the owner of his intention to do so, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due under the agreement.

(2) For the purposes of subsection (1), the net balance due is the balance originally payable under the agreement less —

(a) any amount (other than the deposit) paid or provided by or on behalf of the hirer under the agreement;

(b) the statutory rebate for terms charges; and

(c) the statutory rebate for insurance where the hirer requires any policy of insurance to be cancelled if such policy has been taken out for his benefit and the premiums in respect thereof have been paid for by the owner.

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

(a) at any time during the continuance of the agreement; or

(b) where the owner has taken possession of the goods, upon payment to the owner (within 14 days after the owner has served a notice in the form set out in the Sixth Schedule) in addition to the net balance due together with the reasonable costs including costs, if any, of storage, repair or maintenance of the goods incurred by the owner incidental to his taking possession of the goods.

Power of hirer to terminate hiring.

14. (1) The hirer of any goods comprised in a hire-purchase agreement may terminate the hiring by returning the goods to the owner during ordinary business hours at the place at which the owner ordinarily carries on business or to the place specified for that purpose in the agreement.

(2) Where the nature of the goods comprised in a hire-purchase agreement or the facilities available at the place or places of business of the owner or the place specified in the agreement is or are such that it would be impracticable to return the goods to such a place, the hirer may terminate the hiring by returning the goods to any place agreed to by the parties to the agreement.

(3) Where the parties fail to agree, the hirer who proposes to return the goods to the owner under this section may, subject to subsection (5), apply to a court for an order fixing the place to which the goods may be returned, and the court —

(a) shall fix the place that is in its opinion reasonable having regard to all the circumstances surrounding the transaction; and

(b) may order that, subject to the goods being returned to the owner, the hiring shall be terminated on such date as is specified in the order.

(4) Notice of an application under subsection (3) shall be given to the owner by the hirer.

(5) When a hire-purchase agreement is terminated pursuant to this section, the owner is 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.

Repossession

Notices to be given to hirer when goods repossessed.

15. (1) Subject to this section, an owner 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 until he has served on the hirer a notice, in writing, in the form set out in the Fifth Schedule and the period fixed by the notice has expired, which shall not be less than 14 days after the service of the notice.

(2) An owner need not comply with subsection (1) if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provision of the agreement, but the onus of proving the existence of those grounds shall lie upon the owner.

(3) Within 14 days after the owner has taken possession of goods that were comprised in a hire-purchase agreement, he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form set out in the Sixth Schedule.

(4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement, he shall —

(a) deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods; or

(b) if the hirer is not present at that time send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.

(5) The document acknowledging receipt of the goods required under subsection (4) shall set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.

(6) If the notice required by subsection (3) is not served, the rights of the owner under the hire-purchase agreement shall thereupon cease and determine; but if the hirer exercises his rights under this Order to recover the goods so taken possession of, the agreement shall have the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.

Owner to retain possession of goods repossessed for 14 days.

16. Where an 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 —

(a) until after the expiration of 14 days after the date of the service on the hirer of the notice referred to in subsection (3) of section 15; or

(b) if notice under paragraph (a) of subsection (1) of section 17 has been given, until the time for payment or tender pursuant to that notice has expired,

whichever is the later.

Rights and immunities of hirer when goods repossessed.

17. (1) Where the owner takes possession of any goods comprised in a hire-purchase agreement —

(a) the hirer may, within 14 days after the service on him of the notice referred to in subsection (3) of section 15, by giving to the owner a notice in writing signed by the hirer or his agent —

- (i) require the owner to redeliver to or to the order of the hirer (subject to compliance by the hirer with section 18) the goods that have been repossessed; or
- (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first-mentioned notice; or

(b) the hirer may recover from the owner —

- (i) if the value of the goods at the time of the owner so taking possession thereof is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement exceeds the net amount payable, the difference between that total and the net amount payable; or
- (ii) if the value of the goods at the time of the owner so taking possession thereof is equal to or greater than the net amount payable, the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable.

(2) Where the owner takes possession of any goods comprised in a hire-purchase agreement, the owner is not entitled to recover any sum (whether under a judgment, order or otherwise) which if added together with —

(a) the value of the goods at the time of the owner so taking possession thereof; and

(b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement,

exceeds the net amount payable in respect of the goods.

(3) For the purposes of this section —

(a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods; and

(b) the value of any goods at the time of the owner taking possession thereof is –

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

less –

- (A) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
- (B) any amount properly expended by the owner on the storage, repair or maintenance of the goods; and
- (C) (whether or not the goods have subsequently been sold or disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.

(4) Where the owner has sold goods of which he has taken possession, the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him at the time when he took possession of the goods shall lie upon the owner.

(5) No amount is recoverable by the hirer under this section except where the owner has failed to serve on the hirer notice as required by subsection (3) of section 15 unless –

(a) the hirer, within 14 days after the owner has served a notice as required by subsection (3) of section 15, gives to the owner notice in writing –

- (i) setting out the amount claimed under this section and the amount that is claimed by the hirer to be the value of the goods at the time of the owner taking possession thereof; and
- (ii) signed by the hirer or his advocate and solicitor or agent; and

(b) proceedings for the recovery of the amount so claimed under this section are commenced not later than 3 months after the giving by the hirer to the owner of the notice referred to in paragraph (a).

(6) If, before the proceedings referred to in subsection (5) are commenced by the hirer, the owner serves an offer in writing on the hirer to pay any amount in satisfaction of the claim by the hirer under this section, the owner, in the

proceedings, is entitled to pay into court the amount so offered and, upon so doing, is entitled to the same rights as he would have had if that amount had been tendered to the hirer before the proceedings were commenced.

(7) No such right as is referred to in subsection (6) shall be available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

Power of hirer to regain possession of goods in certain circumstances.

18. (1) If, within 14 days after giving notice to the owner pursuant to paragraph (a) of subsection (1) of section 17, the hirer —

(a) pays or tenders to the owner any amount due by the hirer under the hire-purchase agreement in respect of the period of hiring up to the date of the payment or tender (and for the purposes of this paragraph the hiring shall be deemed to have continued up to that date);

(b) remedies any breach of the agreement or (where he is unable to remedy the breach by reason of the fact that the owner has taken possession of the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter or thing necessary to remedy the breach; and

(c) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his taking possession of the goods and of his returning them to the hirer,

the owner shall forthwith return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the breach had not occurred and the owner had not taken possession thereof.

(2) Where goods are returned to the hirer pursuant to subsection (1) and any breach of the hire-purchase agreement has not been remedied, the owner has no right arising out of the breach to take possession of the goods unless —

(a) by notice in writing given to the hirer at the time of the return of the goods he specifies the breach and requires it to be remedied; and

(b) the hirer fails within 14 days or within the time specified in the notice (whichever is the longer) after receiving the notice to remedy the breach.

Power of court to vary existing judgments or orders when goods are repossessed.

19. In any proceedings arising out of a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of the court against the hirer for the recovery of money so far as is necessary to give effect to section 17.

PART V

GUARANTORS

Liability of guarantor and his rights on repossession.

20. (1) Subject to this Order, a guarantor shall not, by reason of the operation of this Order, be discharged from liability under his guarantee.

(2) The liability of a guarantor shall continue notwithstanding that the owner has, pursuant to the provisions of a hire-purchase agreement, taken possession of the goods comprised therein (and whether or not the goods have been redelivered to the hirer pursuant to this Order); but nothing in this subsection shall operate to preserve the liability of a guarantor where the owner and the hirer have entered into a new agreement in respect of the goods comprised in any hire-purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the hirer, the performance of whose obligations he has guaranteed; but nothing in this Order shall affect any agreement by the guarantor binding him to the performance of any obligation that is not one of the obligations imposed on the hirer under the hire-purchase agreement in respect of which the guarantee is given.

(4) Where goods have been delivered to the hirer pursuant to a hire-purchase agreement and the owner subsequently takes possession thereof, any guarantor who has paid any moneys to the owner in accordance with his guarantee shall have the like right in like manner to recover those moneys as he would have had if he had been the hirer of the goods, but for the purpose of calculating the amount received by the owner all moneys paid and the value of any other consideration provided by or on behalf of the hirer shall be deemed to have been paid or provided by the guarantor.

(5) No moneys shall be recovered by the guarantor in excess of the moneys actually paid by him.

Guarantor not to be bound in certain cases.

21. (1) Where a guarantor of the performance of the obligations of the hirer under a hire-purchase agreement enters into an agreement binding the guarantor —

(a) to pay to the owner an aggregate sum which is larger than the balance originally payable under the agreement; or

(b) to perform an obligation in respect of goods other than the goods comprised in the hire-purchase agreement,

the agreement so entered shall be void unless the agreement is executed by the guarantor in the presence of an advocate and solicitor instructed and employed independently of the owner and the advocate and solicitor certifies in writing upon the agreement that —

(i) he is satisfied that the guarantor understands the true purport and effect of the agreement; and

(ii) the guarantor has executed the agreement in his presence.

(2) An advocate and solicitor shall not give a certificate in respect of an agreement under subsection (1) unless —

(a) he has read over and explained the agreement to the guarantor or has caused the agreement to be read over and explained to the guarantor in his presence;

(b) he has examined the guarantor touching his knowledge of the agreement;

(c) he is satisfied that the guarantor understands the true purport and effect of the agreement; and

(d) the guarantor has freely and voluntarily executed the agreement in his presence.

(3) Failure by an advocate and solicitor to comply with subsection (2) in respect of a certificate shall not invalidate the certificate.

Rights of guarantor against owner.

22. (1) The guarantor under this Part may at any time secure his discharge by paying the amount due to the owner from the hirer.

(2) Upon such payment being made, he is entitled to —

(a) sue the hirer in the name of the owner for any breach of the hirer's obligations under the hire-purchase agreement subject to providing the owner with a suitable indemnity for costs, or sue in his own name if he takes a legal assignment of the hire-purchase debt; and

(b) insist upon the transfer to himself of all securities taken by the owner from the hirer to secure performance of the hirer's obligations.

(3) The guarantor is entitled in the event of any claim being made against him by the owner on the guarantee to avail himself of any set-off or counterclaim which the hirer may possess against the owner.

(4) Unless otherwise agreed by the parties, a guarantor who exercises his rights under this section shall pay to the owner any reasonable costs incurred by the owner (including legal expenses) in preparing, drawing, stamping or registering the indemnity, assignment or transfer, as the case may be.

Rights of guarantor against hirer.

23. (1) The guarantor is entitled to be indemnified by the hirer against any claim made by the owner on the guarantee.

(2) The guarantor is entitled to compel the hirer to pay the instalments in respect of the hire-purchase agreement as and when they fall due; and for this purpose he may apply to the court for an order to that effect.

Guarantor not to seize.

24. Nothing in this Part shall entitle the guarantor to exercise a licence to seize conferred on the owner by the hire-purchase agreement, except where the agreement expressly provides that the licence shall be assignable.

PART VI

INSURANCE

Owner may require insurance cover for goods.

25. An owner may, subject to section 26, require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

Restrictions on rights of owner to require insurance.

26. [1] An owner shall not require a hirer to insure any such risk with any particular registered insurer.

(2) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such reasonable terms, conditions and exceptions as are required by the owner in the names of the owner and the hirer with a registered insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

(3) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions and exceptions that the owner would not require if he arranged the insurance.

(4) Where any goods comprised in a hire-purchase agreement are insured in the joint names of the owner and the hirer against any risk with a particular registered insurer, any hirer who during the period of the hire-purchase agreement insures those goods against any risk with another registered insurer without first informing the owner thereof shall be guilty of an offence.

Benefit of rebate to pass to hirer.

27. Where, in respect of the insurance of goods comprised in a hire-purchase agreement, the insurer allows any rebate including a no-claim rebate or rebate of a similar nature (as distinct from legitimate agency commission payable to an owner who is also a *bona fide* agent of an insurer and who arranges the insurance on behalf of the hirer) the hirer under the agreement is entitled to the benefit of the rebate and any person who knowingly pays or allows any such rebate to an owner shall be guilty of an offence.

Contents of contracts of insurance.

28. Every copy of a policy of insurance (not being a policy of third-party insurance) and every statement, served upon a hirer pursuant to section 4, shall —

(a) identify the goods or the part of the goods to be insured;

(b) contain a statement of the amount and period for which the goods are insured or are to be insured; and

(c) if the amount for which the goods are or are to be insured will vary during the period of the agreement, contain a statement showing the varying amounts.

PART VII

GENERAL

Limitation on terms charges.

29. (1) The terms charges in relation to a hire-purchase agreement shall not, when calculated as a rate per cent per annum in accordance with the formula set out in the Seventh Schedule, exceed a rate per annum as may be prescribed by any regulations made under this Order in respect of any goods or class of goods.

(2) Where a hire-purchase agreement is entered into in contravention of this section, the hirer may, by notice in writing to the owner signed by the hirer or the hirer's agent, elect either to treat the agreement as void or to have his liability reduced by the amount included in the agreement for terms charges; and —

(a) where the hirer elects to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement shall be recoverable by action as a debt due to him by the owner; or

(b) where the hirer elects to have his liability reduced by the amount included in the agreement for terms charges, his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by action by the hirer as a debt due to him by the owner.

Minimum deposits.

30. (1) Where the minimum amount of the deposit in respect of any goods or class of goods is not prescribed, if an owner enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods, or partly in cash and partly in goods, to a value as prescribed by the Minister by notification published in the *Gazette*, the agreement shall be void.

(2) In this section and in section 31, "hire-purchase agreement" does not include any agreement or arrangement that is entered into solely for the purpose of giving effect to an assignment or transfer of the rights and liabilities under an existing hire-purchase agreement from the hirer to another person.

Certain payments **etc.** not to be treated as deposits for purposes of this **Part**.

31. (1) No deposit —

[a) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly —

- (i) from or through the owner (if the owner is not a banker);
- (ii) from or through an agent or servant of the owner;
- (iii) from or through a dealer; or
- (iv) from or through any person whose business or part of whose business it is, by agreement with the owner or any person acting on behalf of the owner, to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner;

[b) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;

[c) to the extent that it is made out of an amount allowed or credited in respect of, or by reference to, amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or

(d) to the extent that it is provided by goods that were, to the knowledge of the owner or dealer, acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether section 30 has been complied with.

(2) The provisions of this Part shall be deemed to have been complied with by the owner if a deposit in accordance with those provisions has been obtained by the dealer or an agent or servant of the owner.

(3) Any person who knowingly enters into, or procures, arranges, or otherwise assists or participates in, a transaction contravening this section shall be guilty of an offence.

Power of court to reopen certain hire-purchase transactions.

32. (1) In any proceedings under this Order or arising out of a hire-purchase agreement, or instituted pursuant to subsection (4), where it appears to the court that the transaction is harsh and unconscionable or is otherwise such that it will be just to give relief, the court may reopen the transaction.

(2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation —

(a) reopen any account already taken between the parties;

(b) relieve the hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges, and other charges as the court adjudges to be fairly and reasonably payable;

(c) set aside either wholly or in part or revise or alter any agreement made or security given in connection with the transaction;

(d) give judgment for any party for such amount as having regard to the relief, if any, that the court thinks fit to grant, is justly due to that party under the agreement; and

(e) if it thinks fit give judgment against any party for delivery of the goods if they are in his possession.

(3) Where it appears to the court that any person other than the owner has shared in the profits of or has any beneficial interest prospectively or otherwise in the transaction that the court holds to be harsh and unconscionable, the court may add that person as a party to the case and may give judgment against that person for such amount as it thinks fit or for the delivery of the goods if they are in his possession and the court may make such other order in respect of that person as it thinks fit.

(4) Subject to subsection (5), proceedings may be instituted in the court by the hirer or any guarantor under a hire-purchase agreement for the purpose of obtaining relief under this section.

(5) A hirer or guarantor under a hire-purchase agreement shall not be entitled to institute proceedings under this section —

(a) in a case where the owner has taken possession of the goods comprised in the agreement after the expiration of a period of 4 months after the date on which the owner serves on the hirer the notice required by subsection (3) of section 15 to be served on him; or

(b) in any other case, after the expiration of a period of 4 months from the time when the transaction is closed.

(6) In any proceedings under this section, the court shall have and may exercise all or any of the powers conferred by subsections (1), (2) and (3), notwithstanding that the time for the payment of any of the amounts payable under the agreement may not have arrived.

Avoidance of certain provisions.

33. Any provision in any hire-purchase agreement whereby —

(a) any right conferred on the hirer by this Order to determine a hire-purchase agreement is excluded or restricted;

(b) the hirer is subject to any greater liability on the determination, in any manner whatsoever, of the hire-purchase agreement or of the bailment thereunder, than the liability to which he would be subject if the hire-purchase agreement were determined in accordance with this Order;

(c) the hirer is required to pay charges on any overdue instalment at a rate per annum exceeding that prescribed by the Minister by notification published in the *Gazette*;

(d) the owner is relieved from liability for the acts or defaults of any person acting in connection with or in the course of the negotiations leading to the entering into the hire-purchase agreement;

(e) the owner or any person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods comprised in a hire-purchase agreement otherwise than in accordance with this Order or is relieved from liability for any such entry;

(f) the operation of the hire-purchase agreement is determined or modified or any person is authorised to repossess any goods comprised in a hire-purchase agreement if the hirer becomes bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement (whether all or any of those events are named); or

(g) except as expressly provided by this Order, the operation of any provision of this Order is excluded, modified or restricted,

shall be void and of no effect.

Provisions relating to securities collateral to hire-purchase agreements.

34. Where –

(a) a bill of exchange or promissory note has been given by a hirer or guarantor under a hire-purchase agreement to the owner in respect of an amount payable under the agreement; and

(b) the payment in due course of the bill of exchange or promissory note would, by virtue of the operation of any provision of this Order or otherwise, result in payment of an amount in excess of the liability of the hirer under the agreement,

the owner shall be liable to indemnify the hirer or guarantor, as the case may be, in respect of the amount of the excess.

False statement by dealers etc. in proposals.

35. Where –

(a) a dealer or a person on behalf of a dealer, an agent or a person on behalf of an owner prepares or causes to be prepared a hire-purchase agreement or offer in writing that, if accepted, will constitute a hire-purchase agreement with the intention of bringing about a contractual relationship between an owner and a hirer; and

(b) the agreement or offer contains to the knowledge of the dealer or a person on behalf of the dealer, agent or person acting on behalf of the owner, as the case may be, a false statement or representation that is false in any material particular,

the dealer or a person on behalf of the dealer, agent or person acting on behalf of the owner shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 12 months or both.

Hirer may be required to state where goods are.

36. (1) The owner of any goods comprised in a hire-purchase agreement may, at any time by notice in writing served on the hirer thereof, require him to state in writing where the goods are or, if the goods are not in his possession, to whom he delivered the goods or the circumstances under which he lost possession of them.

(2) Any hirer who –

(a) does not within 14 days after the receipt of such a notice give to the owner such a statement; or

(b) gives a statement containing any information that is to the knowledge of the hirer false,

shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 12 months or both.

Fraudulent sale or disposal of goods by hirer.

37. Every person who —

(a) by the disposal or sale of any goods comprised in a hire-purchase agreement;

(b) by the removal of the goods; or

(c) by any other means,

defrauds or attempts to defraud the owner shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 3 years or both.

Certain alterations etc. of hire-purchase agreements to be of no effect.

38. Where a hire-purchase agreement is signed by or on behalf of the hirer, any alteration of, or matter added to, the written document that contains the terms and conditions of the agreement after the document was signed —

(a) if the alteration is an alteration of any of the matters required to be specified, contained, or set out in the agreement by paragraphs (c), (d) and (e) of subsection (3) of section 3; or

(b) if the additional matter is a matter required to be so specified, contained, or set out or affects any matter required to be so specified, contained, or set out,

has no force or effect unless the hirer or his agent has consented to the alteration or the additional matter by signing or initialling the agreement in the margin thereof opposite the alteration or additional matter.

Second-hand goods.

39. (1) Where goods comprised in a hire-purchase agreement are, at the time when the agreement is entered into, second-hand goods, then unless —

(a) the goods are described in the agreement as second-hand goods; or

(b) in any proceedings taken by the owner to enforce the agreement, the court is satisfied that –

- (i) the hirer was aware at the time when he or his agent signed the agreement that the goods comprised or to be comprised therein were second-hand goods; or
- (ii) the owner was not aware at the time when the agreement was entered into the goods comprised therein were second-hand goods,

the liability of the hirer thereunder shall be reduced by the amount included in the agreement for terms charges.

(2) The amount may be set off by the hirer against the amount that would otherwise be due or become due to the owner under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer from the owner as a civil debt.

Worker's lien.

40. (1) Subject to subsection (2), where a worker does work upon goods comprised in a hire-purchase agreement in such circumstances that, if the goods were the property of the hirer, the worker would be entitled to a lien on the goods for the value of his work, he shall be entitled to a lien notwithstanding that the goods are not the property of the hirer.

(2) The lien is not enforceable against the owner if the hire-purchase agreement contains a provision prohibiting the creating of a lien by the hirer and the worker had notice of that provision before doing the work upon the goods.

Fixtures.

41. (1) Where the goods comprised in a hire-purchase agreement were not fixtures to land at the time when the agreement was entered into, the goods shall not, so long as the owner retains any rights in those goods under the agreement, be treated as fixtures to land.

(2) Notwithstanding anything in subsection (1), the owner shall not be entitled to repossess goods which have been affixed to a dwelling-house or residence, if after the goods have become so affixed any person other than the hirer has *bona fide* acquired through valuable consideration an interest in the land without notice of the rights of the owner of the goods.

(3) Where any damage is caused to land or any building thereon by the removal and repossession of any goods affixed thereto by the owner of the goods,

he shall compensate the owner of the land or the building, as the case may be, in respect of the damage.

Operation of certain laws.

42. Any written law for the time being in force relating to bills of sale shall not apply to any provision in a hire-purchase agreement whereby the rights of the owner thereunder are extended to any replacements or renewals by the hirer of any part or parts thereof or any accessories added or additions made by the hirer to any goods **comprised** in any such agreement.

Power of court to extend times.

43. Any time prescribed by this Order for the service or giving of any notice or other document or for the commencement of proceedings may, on an application made to the court (either before or after the expiration of that time but after notice to the other party to the hire-purchase agreement), be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Power of court to order delivery of goods unlawfully detained.

44. (1) Where —

(a) an application is made to the court by an owner who is entitled to take possession of any goods comprised in a hire-purchase agreement; and

(b) the application is supported by evidence on affidavit that the hirer or any person in possession of the goods has refused or failed to deliver up possession of the goods on the service of a notice of demand made by the owner or by an agent of the owner authorised in that behalf,

the court may summon that hirer or person to appear before the court and if it appears to the court that the goods are being detained without just cause, the court may order the goods to be delivered up to the owner at or before a time and at a place, to be specified in the order.

(2) Any person who neglects or refuses to comply with any order made under this section shall be guilty of an offence.

Service of notices or documents.

45. Any notice or document required or authorised to be served on or given or sent to an owner or hirer or any person under this Order shall be deemed to be duly served or given or sent if it has been —

(a) delivered to him personally;

(b) left at his place of residence or business with some other person apparently an inmate thereof or employed thereat and apparently of or over the age of 16 years; or

(c) posted by registered post addressed to him at his last known place of residence or business.

Proof of service.

46. The affidavit or oral evidence of an owner or his servant or agent as to the delivery, leaving or posting of any notice or document required or authorised to be served, given or sent by this Order shall be admissible as *prima facie* proof of service, giving or sending of the notice or document.

Size, type etc. required in certain documents.

47. (1) Any prescribed document or part thereof –

(a) not being the signature or initials of any person, that is in handwriting that is not clear and legible; or

(b) that is printed in type of a size smaller than the type known as ten-point Times,

shall, for the purposes of this Order, be deemed not to be in writing.

(2) Where, by virtue of this section, a prescribed document or part of a prescribed document is, for the purposes of this Order, deemed not to be in writing, then, except as is otherwise in this Order expressly provided, the validity or effect of the prescribed document shall not be affected.

(3) Nothing in this section shall affect the liability of any person to be convicted of an offence under this Order.

(4) In this section, "prescribed document" means –

(a) any hire-purchase agreement;

(b) any written statement under subsection (1) of section 3;

(c) any copy of an agreement, notice or statement required by section 4 to be served on a hirer;

(d) any statement required by subsection (1) of section 8 to be sent to a hirer; and

(e) any notice under subsection (1) or (3) of section 15.

Penalty.

48. Any person who is guilty of an offence under this Order or any regulations made thereunder for which no other penalty is expressly provided by this Order or the regulations made thereunder shall be liable on conviction to a fine not exceeding \$3,000, imprisonment for a term not exceeding 6 months or both.

Amendment of Schedules.

49. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, amend any of the Schedules.

Regulations.

50. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for or in respect of every purpose which he considers necessary for carrying out this Order and for the prescribing of any matter which is authorised or required under this Order to be so prescribed.

(2) In addition to the powers conferred by subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations providing —

(a) for the minimum amounts of deposits and maximum maturity periods for different types or classes of loans or advances granted by owners;

(b) for the submission by owners who enter into hire-purchase agreements of such annual and periodic accounts and returns as may be prescribed and in such form as may be prescribed; and

(c) for the collection, at such intervals or on such occasions and in such form as may be prescribed, of statistical information on such matters relating to hire-purchase as may be prescribed.

FIRST SCHEDULE

(section 1(3))

LIST OF GOODS

1. All consumer goods.
2. Motor vehicles within the meaning of the Road Traffic Act (Chapter 68).

Note — For the purposes of this Schedule, "consumer goods" means goods purchased for personal, family or household purposes and not for the purposes of any trade or business.

SECOND SCHEDULE

(section 3(1))

**SUMMARY OF FINANCIAL OBLIGATIONS UNDER PROPOSED
HIRE-PURCHASE AGREEMENT RELATING TO ***

The cash price of the goods is..... \$.....

(a) Other charges are —

(i) For insurance for years \$

(ii) For freight, vehicle registration, etc \$ \$.....

(b) The terms charges are + and represent a rate per cent per annum not exceeding % \$.....

The total amount you will have to pay (including deposit of \$.....] is..... \$.....

The difference between the cash price of the goods and the total amount you will have to pay is therefore..... \$.....

Your instalments under the proposed agreement will be #.....

Note — The sequence of any item or items in the group of items marked "(a)" may be altered in relation to any other item or items in that group, but the sequence of that group shall not be altered in relation to the items not marked "(a)".

* Insert short description of goods.

+ Insert, where the proposed agreement is an agreement to which section 29(1) of the Hire-Purchase Order, 2006 applies, a rate per cent per annum obtained by calculating the terms charges in accordance with the formulae set out in the Seventh Schedule to the Order.

Insert number, amount and **intervals** of instalments.

THIRD SCHEDULE

(section 3(3))

ANNUAL PERCENTAGE RATE

The annual percentage rate shall be calculated in accordance with the following formula –

$$\frac{2 NF (300C + NF)}{2 N^2F + 300C (N + 1)}$$

where –

N is the total number of instalments;

C is the number of instalments that, under the contract, will be paid in one year or, where the contract is to be completed in less than one year, the number of instalments that would be paid in one year if instalments continued to be paid at the same intervals;

F is the amount determined in accordance with the formula –

$$\frac{100C \times T}{N \times A}$$

where –

C is the same number as the first-mentioned formula;

T is the total amount of pre-determined terms charges;

N is the total number of instalments;

A is the amount financed.

FOURTH SCHEDULE

(section 4(1))

TERMS OF NOTICE TO HIRERS

Under the provisions of the Hire-Purchase Order, 2006 —

- (a) you are entitled to a copy of the agreement and a statement of account if you make a written request for either or both. You may not request such a copy or a statement more than once in 3 months. Statements will be supplied without charge. A copy of the agreement will be sent in response to your first request without charge. With any second or subsequent request you must send \$10;
- (b) with the written consent of the owner you can assign your rights under the hire-purchase agreement and he may not unreasonably refuse his consent;
- (c) you have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see section 13 of the said Order; and
- (d) if you are unable to pay your instalments you are entitled to return the goods to the owner at your own expense, but if you do you will be liable to pay an amount sufficient to cover the loss suffered by the owner.

FIFTH SCHEDULE

(section 15(1))

NOTICE OF INTENTION TO REPOSSESS

Take notice that, the owner of
 *, hired by you under an agreement dated the
 day of 20....., intends to retake
 possession of the goods after the expiration of days from the
 service of this notice unless —

- (a) the arrears of instalments at the date of this notice which now amount to \$ are paid;
- (b) the charges due on overdue instalments at the date of this notice which amount to \$ are paid; and
- (c) such other instalments as have fallen due since the date of this notice, together with charges due on such overdue instalments, are paid,

to at on or before 20.....

Total amount payable..... \$

Amount paid or provided by hirer to
/...../20..... \$

Arrears under agreement to
/...../20..... \$

* Insert description of goods.

SIXTH SCHEDULE

(sections 13(3) and 15(3))

NOTICE TO HIRERS

Now that the goods you hired have been repossessed you will be entitled to get them back –

- (a) if within 14 days, you require the owner, by notice in writing signed by you or your agent, to redeliver the goods to you and if, within 14 days after giving the notice, you reinstate the agreement by paying the arrears of instalments and charges due on overdue instalments and remedy the following breaches of the agreement (or pay the owner's expenses in remedying them).

The owner's estimate of the amount you must pay to reinstate the agreement is –

Arrears of instalments.....	\$.....
Charges due on overdue instalments.....	\$.....
Cost of storage, repair or maintenance.....	\$.....
Cost of repossession.....	\$.....
Cost of redelivery.....	\$.....
Total.....	\$.....

or

- (b) if, within 14 days, you give notice of intention to finalise the agreement and pay the balance due under the agreement and cost of repossession.

The owner's estimate of the amount required to finalise the agreement is –

Total amount payable under the agreement.....	\$.....
Less deposit and instalments paid.....	\$.....
Balance due under agreement.....	\$.....
Less statutory rebates.....	\$.....
Add costs of repossession.....	\$.....
Storage, repair or maintenance.....	\$.....
Total.....	\$.....

SIXTH SCHEDULE – continued

If you do not reinstate or **finalise** the agreement you will be liable for the owner's loss unless the value of the goods repossessed is sufficient to cover your liability. If the value of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The owner's estimate of the value of the goods repossessed is..... \$.....

* On the basis of that estimate you are entitled to a refund of..... \$.....

You are liable to pay the owner..... \$.....

Note – You may give a written notice to the owner requiring the owner to sell the goods to any cash buyer you can introduce who is willing to pay the owner's estimate of the value, i.e., +.

Do Not Delay

Action to enforce your rights should be taken at once. You will lose your rights 14 days after the service or posting of this notice if you do not take action.

Note – Where this notice is sent to a guarantor it shall be endorsed as follows –

This notice is sent to you as guarantor of

As guarantor you have certain rights under the Hire-Purchase Order, 2006 and you are advised to seek advice at once.

* Strike out whichever is inapplicable.

+ Insert owner's estimate of value.

SEVENTH SCHEDULE

(section 29(1))

TERMS CHARGES

The terms charges shall be calculated in accordance with the following formula —

$$R = \frac{100 \times C}{T \times P}$$

where —

R represents the terms charges calculated as a rate per cent per annum;

C represents the amount of terms charges expressed in dollars and fractions of dollars;

T represents the time that elapses between the time fixed by or under the agreement for the making of the first instalment and the time so fixed for the making of the last instalment, together with —

- (a) one week where the instalments are payable under the agreement at regular weekly intervals;
- (b) 2 weeks where the instalments are payable under the agreement at regular fortnightly intervals; or
- (c) one month where the instalments are payable under the agreement at regular monthly intervals,

expressed in years and fractions of years; and

P represents the difference between the cash price of the goods comprised in the agreement and the amount of the deposit, together with —

- (a) freight, if any;
- (b) vehicle registration fees, if any; and
- (c) insurance, if any,

expressed in dollars and cents.

16th. MARCH, 2006

Made this 4th. day of Safar, 1427 Hijriah corresponding to the 4th. day of March, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM**