

## HIRE-PURCHASE AGREEMENTS ORDINANCE 1951.<sup>(1)</sup>

No. 53 of 1951.

### An Ordinance relating to Hire-purchase Agreements.

**B**E it ordained by the Administrator of the Government of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949-1950*, as follows:—

- Short title.           1. This Ordinance may be cited as the *Hire-purchase Agreements Ordinance 1951*.<sup>(1)</sup>
- Commencement.       2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice<sup>(1)</sup> in the *Gazette*.
- Repeal.               3. The *Hire-purchase Agreements Ordinance 1936*<sup>(2)</sup> of the Territory of New Guinea is repealed.
- Definitions.         4.—(1.) In this Ordinance, unless the contrary intention appears—
- “hire-purchase agreement” includes an agreement not being a bill of sale whereby—
- (a) a person agrees to hire goods and obtains an option to purchase those goods; or
- (b) a person agrees to pay for the hire of goods a sum or sums amounting in all to not less than three-quarters of the value of the goods when taken on hire;
- “hirer” means the person who takes goods on hire under a hire-purchase agreement;
- “owner” means the owner for the time being of goods let on hire under a hire-purchase agreement.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Cwth. Administrator in Council.	Date on which notified in Cwth. Gaz.	Date on which took effect.
13.11.1951	13.11.1951	22.11.1951 (Papua and N.G. Govt. Gaz. of 22.11.1951)

(2) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. I., on pp. 229-232.

(2.) For the purposes of this Ordinance, the unpaid balance of the moneys payable under a hire-purchase agreement shall be ascertained as follows:—

- (a) where the hire-purchase agreement provides that the hirer shall or may obtain the property in the goods upon payment of amounts specified in the hire-purchase agreement, the unpaid balance shall mean the amounts still to be paid at the relevant time before the property in the goods will or may pass to the hirer; and
- (b) where the hire-purchase agreement does not so provide, the unpaid balance shall mean the value of the goods at the commencement of the hiring, together with interest thereon at six per centum per annum for the period during which the goods have been held on hire, less any amounts paid by the hirer by way of deposit or rent.

5. This Ordinance binds the Administration.

Ordinance  
to bind  
Administration.  
Power of owner  
on default by  
hirer.

6.—(1.) If the hirer makes default in the payment of any money due under a hire-purchase agreement, or in the observance of any covenant or condition or term of the hire-purchase agreement, the owner, without any further consent or concurrence on the part of the hirer, and in addition to any of his rights and remedies under the hire-purchase agreement, may—

- (a) enter upon any land (whether land of the owner or anyone else) where the goods comprised in the hire-purchase agreement are or where the owner or his agent reasonably suspects that they are;
- (b) for the purpose of the entry, open or remove any outer or inner gate, door, fastening or obstruction;
- (c) seize and take possession of the goods;
- (d) remove the goods to a place for safety, convenience of sale or re-hiring, or any other purpose or suffer them to remain where they are found;
- (e) sell or re-hire the goods either in one or more lots and at any time or times and at any place or places, and either by public auction or private contract, or partly by public auction and partly by private contract;
- (f) give credit to the purchaser for the whole or any part of the purchase price, and take or forego any security for payment of the unpaid purchase money;
- (g) make any reasonable terms and conditions of the sale or re-hiring;
- (h) buy in all or any of the goods at any sale by auction of them; and

(i) execute any contract or other instrument necessary for the exercise of any of the powers given by this sub-section.

(2.) The owner shall apply the proceeds of any sale or re-hiring of any goods seized under this section as follows:—

(a) firstly, in payment of any expenses reasonably incurred for the purpose of making the goods saleable, and the costs of, and incidental to, the re-possession and the re-sale or re-hiring, including the costs of transportation of the goods to the premises of the owner, and of insuring the goods, and of the execution of any other powers given by the last preceding sub-section;

(b) secondly, in payment of the unpaid balance of the moneys payable under the hire-purchase agreement, together with interest thereon at eight per centum per annum from the date when the hire-purchase agreement would have expired, if it had been completely carried out by both parties, until the date of re-sale or re-hiring; and

(c) lastly, the balance shall be paid to the hirer of the goods.

(3.) If an owner who has re-possessed any goods comprised in a hire-purchase agreement does not sell or re-hire those goods within twelve months after re-possession of them, he shall be under the same liability to the hirer as if he had sold the goods immediately upon the expiration of the twelve months, and he shall be deemed to have received as proceeds of that sale the sum representing the price which the goods might reasonably be expected to have realized if they had been made saleable and sold at that time.

(4.) This section shall apply in respect of every default made after the commencement of this Ordinance under a hire-purchase agreement whether entered into before or after the commencement of this Ordinance.

**Contracting out.**

7. An agreement or term of an agreement whereby a person agrees that this Ordinance or any provision of this Ordinance shall not apply to any transaction shall be void for all purposes.

**Liability  
for fraud, &c.**

8. No term of an agreement, whether entered into before or after the commencement of this Ordinance, shall prevent a hirer from claiming or being awarded damages or any other relief for fraud or misrepresentation of the owner or a person acting or purporting to act on behalf of the owner in connexion with a transaction of hire-purchase.

**9.—(1.)** An agreement or term of an agreement (whether a hire-purchase agreement or a separate agreement) whereby it is provided that any hire-purchase agreement shall terminate or may be terminated, or that the goods comprised therein shall or may be re-possessed, or that any right of the hirer shall terminate, if the hirer becomes insolvent or commits an act of insolvency or makes any arrangement or composition with his creditors under any law relating to insolvency (whether all or any of these events are named), shall, to the extent to which it so provides, be void. Provisions for terminating agreement in insolvency void.

(2.) If the hiring is expressed to continue until the happening of any such event as is referred to in the last preceding sub-section, it shall be deemed to be a hiring continuing for the period for which it would continue apart from the provisions of that sub-section.

**10.** Any person who conceals, sells, deals with or disposes of any goods comprised in a hire-purchase agreement with an intent to deprive the owner thereof of his ownership or possession or right to possession, is guilty of an indictable offence. Fraudulent disposition of goods.

Penalty: Imprisonment for twelve months.

**11.** Goods which are comprised in a hire-purchase agreement shall, while the hire-purchase agreement is in force, be incapable of becoming fixtures to realty. Hire-purchase goods not to be fixtures.

**12.—(1.)** If, at the request of the owner of any goods, a person who lends money on the security of hire-purchase agreements (in this section referred to as "the lender") enters into a hire-purchase agreement in relation to those goods with a hirer, the lender shall be in the same position with respect to the hire-purchase agreement as if it had been made between the owner and the hirer and had been duly assigned to the lender by the owner. Provisions as to financiers entering into agreements as owners.

(2.) Nothing in this section shall affect any right of the hirer against the owner or against the lender, either under the terms of the hire-purchase agreement, the provisions of this Ordinance, or otherwise.

**13.** The Administrator in Council may make regulations,<sup>(3)</sup> not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular prescribing the imposition of penalties not exceeding Twenty pounds for breaches of regulations made under this section. Regulations.

---

(3) No regulations had been made before 1.1.1952.