

HIRE PURCHASE (AMENDMENT) BILL, 2021

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A Bill for

AN ACT of Parliament to amend the Hire Purchase Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Hire Purchase (Amendment) Act, 2021.

Amendment of the long title of principal Act.

2. The Hire Purchase Act, Chapter 507, in this Act referred to as “the principal Act” is amended by deleting the word “certain”, appearing in the long title.

Amendment of section 2 of the principal Act.

3. The Hire Purchase Act, Chapter 507, in this Act referred to as “the principal Act” is amended by—

(a) deleting the definition of the phrase “hire-purchase price” and substituting therefore the following new definition;

“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 penalty, compensation or damages for a breach of the agreement;

(b) deleting the definition of the phrase “hire-purchase agreement” and substituting therefore the following new definition:

“hire-purchase agreements” means agreements whereby, an owner of goods allows a person, known as the hirer, to hire goods from him or her for a period of time by paying instalments. The hirer has an option to buy the goods at the end of the Agreement if all instalments are being paid. However, it is not a contract of sale but contract of bailment as the hirer merely has an option to buy the goods and although the hirer has the right of using the goods, he is not the legal owner during the term of the agreement, the ownership of the goods remains with the owner.

(c) inserting the following new definition in its proper alphabetical order—

“Registrar” means the Registrar appointed under the Companies Act;

Amendment of section 3 of the principal Act.

4. The principal Act is amended by deleting section 3 and substituted therefore the following new section—

3. This Act applies to all hire-purchase agreements entered into after the commencement of this Act except a scheme controlled, managed or guaranteed by

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the Government for the purpose of providing loans to any persons for the purchase of motor vehicles.

Amendment of section 4 of the principal Act.

5. The principal Act is amended by deleting section 4.

Amendment of section 5 of the principal Act.

6. The principal Act is amended by deleting section 5.

Amendment of section 6 of the principal Act.

7. The principal Act is amended in section 6(2) (b) by deleting and substituting thereof with :

(b) the agreement contains a statement of cash price, hire purchase price, amount of installments, description of the goods, notice relating to rights of hirer, applicable interest rate, total interest, processing fee, other applicable fees such as insurance, freight charges, additional charges for early settlement of hire purchase agreements, method for calculating balance payable on early settlement, additional charges that may be imposed for assignment of interest to new owners, method for calculating balance payable upon assignment, interest rates to be paid for overdue installments.

Amendment of section 8 of the principal Act.

8. The principal Act is amended in section 8 by inserting the following new subsection immediately after subsection (4)—

(5) A person who contravenes the provisions of this section, commits an offence and shall on conviction, be liable to a fine not exceeding three million shillings or imprisonment for a term not exceeding three years or, to both.

Amendment of section 9 of the principal.

9. The principal Act is amended in section 9 by:
(a) addition of the word “email address” in subsections (1)(a), (1)(b)(i) and (ii).
(b) deleting subsection (2) and substituting therefore the following new subsection—

(2) If a hirer fails to comply with the provisions of subsection (1), the hirer shall on conviction, be liable to a fine not exceeding one hundred thousand shillings.

Amendment of section 10 of the principal.

10. The principal Act is amended in section 10 by—
(a) deleting the phrase "ten thousand" appearing in subsection (2) and substituting therefore the phrase "one million";
(b) deleting subsection (4);
(c) deleting subsection (5);
(d) deleting subsection (6); and
(e) deleting subsection (7).

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11. The principal Act is amended in section 12—

(a) by deleting subsection (1) and substituting therefore the following new subsection—

(1) At any time before the final payment under a hire-purchase agreement falls due, the hirer may terminate the agreement by returning the goods to the owner and giving him written notice of termination of the agreement, and if he does so he shall be liable to pay the difference between the total of the sums paid and one half of the hire-purchase or total purchase price, or if the agreement specifies a lesser amount, he shall be liable to pay the amount so specified.

(b) deleting the word "hire" appearing between the article "the" and the word "shall" and substituting therefore the word "hirer".

New part.

12. The principal Act is amended by inserting the following new "Part VA" immediately after "PART V"—

PART VA— REPOSSESSION BY OWNER

Notice to be given on repossession.

13A. (1) An owner or any authorized person acting on behalf of the 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, in the prescribed form, served on the hirer, a notice and the period fixed by the notice has expired, which shall not be less than 7 days after the service of the notice.

(2) Despite subsection (1), an owner or any authorized person acting on behalf of the owner, may fail to issue a notice, if there are reasonable grounds for believing that the goods comprised in the hire purchase agreement are likely to be removed or concealed by the hirer contrary to the provisions of the agreement.

(3) Within 7 days after the owner or any authorized person acting on behalf of the owner, has taken possession of goods that were comprised in a hire purchase agreement, the owner or any authorized person acting on behalf of the owner, shall serve on the hirer and every guarantor of the hirer a notice of the repossession, in the prescribed manner.

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(4) Where the owner or any authorized person acting on behalf of the owner, takes possession of goods that were comprised in a hire purchase agreement, the owner or any authorized person acting on behalf of the owner 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 setting 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.

(5) If the notice required by subsection (3) is not served, the rights of the owner under this part shall be deemed to have been lost.

Owner to retain possession of goods repossessed.

13B. Where an owner or any authorized person acting on behalf of the owner, has taken possession of any goods, he shall not, without the written consent of the hirer, sell or dispose of the goods or part with possession of the goods—

- (a) until after the expiration of 7 days after the date of the service on the hirer of the notice referred to in section 13A(3); or
- (b) if the notice under section 13C(1)(a) has been given, until the time for payment pursuant to that notice has expired,

whichever is the later.

Hirer's rights and immunities when goods are repossessed.

13C. (1) Where the owner or any authorized person acting on behalf of the owner, takes possession of any goods comprised in a hire purchase agreement—

- (a) the hirer may, within 7 days after the service on him of the notice referred to in section 13A(3), by giving to the owner or any authorized person acting on behalf of the owner a notice in writing signed by the hirer or his agent, require the owner or any authorized person acting on behalf of the owner, to—
 - (i) redeliver to or to the order of the hirer, subject to compliance by the hirer with

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section 13D, the goods that have been repossessed; or

- (ii) sell the goods to any person introduced by the hirer who is willing to buy the goods for cash at a price not less than the value of the goods set out in the hire purchase agreement; or
- (b) the hirer may recover from the owner if the value of the goods at the time of the owner taking possession of the goods is —
 - (i) less than the net amount payable under the agreement 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; or
 - (ii) equal to or greater than the net amount payable under the hire purchase agreement, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable.

Power of hirer to regain possession of goods.

13D. (1) If, within 7 days after giving notice to the owner under section 13C(1)(a), the hirer—

- (a) pays to the owner any amount due from the hirer under the hire purchase agreement;
- (b) remedies any breach of the agreement or pays to the owner the costs and expenses reasonably incurred by the owner in doing any act, matter or thing necessary to remedy the breach; and
- (c) pays 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.

(2) Where goods are returned to the hirer under subsection (1) and any breach of the terms 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

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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 7 days or within the time specified in the notice after receiving the notice to remedy the breach.

Amendment of section 15 of the principal Act.

13. Section 15 of the principal Act is amended by—

- (a) deleting the words "two-thirds" appearing in the header and substituting therefore the word "more than half"; and
- (b) deleting the words "two-thirds" appearing in subsection (1) and substituting therefore the words "more than half".

Amendment of section 19 of the principal Act.

14. Section 19 of the principal Act is deleted.

Amendment of section 20 of the principal Act.

15. Section 20 of the principal Act is amended—

- (a) in subsection (1) by deleting the words "licensing officer" and substituting therefore the word "Registrar";
- (b) in subsection (2) by deleting the words "licensing officer" and substituting therefore the word "Registrar";
- (c) in subsection (3), by deleting the word "one" and substituting therefore the word "twenty";
- (d) in subsection (4), by deleting the word "two" and substituting therefore the word "one";
- (e) in subsection (5) by deleting the words "licensing officer" and substituting therefore the word "Registrar"; and
- (f) Inserting the following new subsection immediately after subsection (5)—

(6) A licence shall for the purpose of carrying out a hire-purchase business under this Act, pay an annual subscription fee of shillings five thousand.

Amendment of section 24 of the principal Act.

16. Section 24 of the principal Act is deleted.

Amendment of section 25 of the principal Act.

17. Section 25 of the principal Act is deleted.

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Amendment of section 26 of the principal Act.

18. Section 26 of the principal Act is deleted.

Amendment of section 27 of the principal Act

19. Section 27 of the principal Act is amended by:

- (a) deleting the phrase “and tenders to the owner a sum of ten shillings for expenses” appearing in subsection (1).
- (b) deleting the word “five hundred” appearing in subsection (1) and substituting therefore the words “twenty thousand”

Amendment of section 29 of the principal Act.

20. Section 29 of the principal Act is deleted.

Amendment of section 32 of the principal Act.

21. Section 32 of the principal Act is deleted.

Amendment of section 33 of the principal Act.

22. Section 33 of the principal Act is deleted.

Amendment of section 34 of the principal Act.

23. Section 34 of the principal Act is deleted and substituted therefore the following new section—
False information.

34. 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 shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term of three years, or to both.

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MEMORANDUM OF REASONS AND OBJECTS.

HP DRAFT AMENDMENTS