



LAWS OF SARAWAK

ONLINE VERSION

**Chapter 68
(1948 Edition)**

BILLS OF SALE ORDINANCE

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CHAPTER 68 (1958 Ed.)

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Sarawak LawNet

BILLS OF SALE ORDINANCE

CHAPTER 68 **(1958 Ed.)**

An Ordinance to make better provision relating to bills of sale.

[1st June, 1949.]

Short title

1. This Ordinance may be cited as the Bills of Sale Ordinance.

Application of Ordinance

2. This Ordinance shall apply to every bill of sale, whether the same is absolute or subject or not subject to any trust whereby a right is conferred, either with or without notice and immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale, but shall not, except as in this Ordinance expressly mentioned, apply to any mortgages, charges or debentures issued by any incorporated company and secured upon the stock or goods, chattels and effects of such company.

Interpretation

- 3.—(1) In this Ordinance—

“bill of sale” includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any mortgage, charge or security thereon, shall be conferred, but does not include the following documents—

- (a) assignments for the benefit of the creditors of the person making or giving the same;
- (b) ante-nuptial marriage settlements;
- (c) transfers or assignments of any ship or vessel or share thereof;
- (d) transfers of goods in the ordinary course of business of any trade or calling;
- (e) bills of sale of goods in foreign ports or at sea;
- (f) bills of lading, warehouse-keeper's certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such documents to transfer or receive goods thereby represented;
- (g) instruments charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory or store, or to their being reshipped for export, or delivered to a purchaser not being the person giving or executing such instrument;

“bill of safe” also includes as regards any personal chattels which may be seized or taken thereunder every attornment, instrument or agreement whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only, but does not include or extend to any charge of any land which the chargee being in possession demises to the chargor as his tenant at a fair and reasonable rent;

“bill of sale” also includes agreements for the hire of personal chattels entered into for the purpose of securing the repayment to the lessor of such chattels of money advanced by him to the hirer, and the hirer shall in every case be deemed to be the grantor of the bill of sale and the lessor shall be deemed to be the grantee thereof;

“personal chattels” means goods, furniture and other articles capable of complete transfer by delivery, and trade machinery as hereinafter defined, and, when separately assigned or charged, fixtures and growing crops, but does not include fixtures except trade machinery as hereinafter defined, when assigned together with any land or building to which they are affixed, nor growing crops when assigned together with any land on which they grow, nor shares or interests in the stocks, funds or securities of any Government or in the capital or property of incorporated companies nor choses in action;

“trade machinery” means the machinery used in or attached to any factory or workshop, exclusive of—

(a) the fixed motive powers, such as the water-wheels and steam-engines, and the steam-boilers, donkey-engines and other fixed appurtenances of the said motive powers;

(b) the fixed power machinery, such as the shafts, wheels, drums and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; and

(c) the pipes for steam, gas and water in the factory or workshop;

“factory” or “workshop” means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes or any of them—

- (a) the making of any article or part of an article;
- (b) the altering, repairing, ornamenting or finishing of any article;
- (c) the adapting for sale of any article.

(2) No fixtures or growing crops shall be deemed to be “separately assigned or charged” by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed to the same person or persons.

Appointment of Registrars

***4.** The Minister may appoint fit and proper persons to be Registrars for each district for the purpose of this Ordinance.

[*Mod. F.L.N. 451/64*].

* Appointment of Registrar of the High Court in Sabah and Sarawak as Registrar for Kuching District—*see* G.N. 1654/67. For other Districts, District Officer of each District shall be the Registrar—*see* G.N. 734/49.

Bill of sale to be void under certain circumstances unless attested and registered

5.—(1) Every bill of sale shall be duly attested and shall be registered as provided in this Ordinance and shall truly set forth the consideration for which it was given, otherwise the following consequences shall ensue—

(a) in the case of a bill of sale made or given by way of security for the payment of money by the grantor thereof, such bill of sale shall be void in respect of the personal chattels comprised therein;

(b) in the case of any other bill of sale, it shall as against all trustees or assignees of the estate of the person whose chattels or any of them are comprised in such bill of sale under the law of bankruptcy or liquidation or under any assignment for the benefit of the creditors of such person, and also as against all officers of court and other persons seizing any chattels comprised in such bill of sale in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which at or after the time of filing the petition for bankruptcy or liquidation or of the execution of such assignment or of executing such process, as the case may be, and after the expiration of seven clear days after the execution of the bill of sale are in the possession or apparent possession of the person making such bill of sale or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be.

(2) Personal chattels shall be deemed to be in the “apparent possession” of the person making or giving a bill of sale, so long as they remain or are in or upon any house, warehouse, shop, building, vessel, works, yard, land or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken or given by or to any other person.

(3) Personal chattels comprised in a valid bill of sale which is duly attested and registered under this Ordinance shall not, so long as such bill of sale continues to be duly registered under this Ordinance, be deemed to be in the possession, order or disposition of the grantor of the bill of sale within the meaning of the law of bankruptcy.

(4) Subsection (3) shall not apply to personal chattels in the possession, order or disposition of the grantor in his trade or business.

Bill of sale to be accompanied by schedule of property

6.—(1) Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale, and such bill of sale shall, save as hereinafter mentioned, have effect only in respect of the personal chattels specifically described in the said schedule and shall be void in respect of any personal chattels not so specifically described.

(2) Save as mentioned in subsection (3), every bill of sale shall be void in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

(3) Nothing in this section shall render a bill of sale void in respect of any of the following things—

(a) any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed;

(b) any fixtures separately assigned or charged and any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to or brought upon any land, plantation, factory, workshop, warehouse or other place in substitution for any of the like fixtures, plant or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale given by way of security void in certain cases

7. Subject and without prejudice to the other provisions of this Ordinance for invalidating bills of sale, every bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void in the following cases—

- (a) if the amount the payment of which is thereby secured is less than one hundred ringgit;
- (b) if it is not made in the form in the First Schedule;
- (c) if it is made or given wholly or in part in consideration of a pre-existing debt.

Bill of sale not to protect chattels against rates

8. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be no protection against a distress for the recovery of rent or municipal or local authority rates, cesses or assessments.

Remedy of grantee

9.—(1) Chattels comprised in a bill of sale made or given by way of security for the payment of money by the of grantor thereof shall not, except with the consent of the grantor, be seized or taken possession of or sold without an order of a court of competent jurisdiction.

(2) A court of competent jurisdiction, on the application of the grantee or transferee, may—

- (a) if the grantor has made default in payment of the sum or sums of money secured by the bill of sale at the time therein

provided for payment or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(b) if the grantor has become bankrupt or has suffered the said chattels or any of them to be distrained for rent or municipal or local authority rates, cesses or assessments or otherwise;

(c) if the grantor fraudulently has either removed or suffered to be removed from the premises the said chattels or any of them;

(d) if the grantor has not, without reasonable excuse, upon demand in writing by the grantee or transferee produced to him his last receipts for rent and municipal or local authority rates, cesses or assessments; or

(e) if execution has been levied against the goods of the grantor under process of any court,

order the chattels comprised in the bill of sale to be seized or taken possession of and sold or may, if satisfied that the grantor should by reason of payment made by him or for any other reason be granted relief, make such other order as seems just.

(3) Not more than one year's arrear of interest shall be recoverable under any bill of sale.

Mode of registering bills of sale

10.—(1) A bill of sale shall be attested and registered under this Ordinance as in this section provided.

(2) The execution by the grantor of every bill of sale shall be attested—

(a) by a Magistrate; or

(b) by a Registrar,

who shall personally explain to the grantor the effect thereof, and the attestation shall state that before the execution of the bill of sale the effect thereof was so explained as aforesaid.

(3) Such bill, with every schedule or inventory thereto annexed, shall be presented for registration to the Registrar for the district within which the property comprised in the bill of sale is at the time of registration situate within seven clear days after the execution by the grantor of such bill.

(4) If a true copy of the bill of sale and of every schedule or inventory thereto is not presented to the Registrar at the time of registration, he shall take a true copy thereof and every bill of sale and the true copy thereof shall be signed and sealed by the Registrar.

(5) The true copy of the bill of sale signed and sealed by the Registrar shall be filed by the Registrar.

(6) If the bill of sale is made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance, condition or declaration shall be deemed to be part of the bill and shall be written on the same paper therewith before the registration, and shall be truly set forth in the copy filed under this Ordinance and as part thereof, otherwise the registration shall be void.

Priority given by registration

11. In case two or more bills of sale are given comprising in whole or in part any of the same chattels they shall have priority in the order of the date of their registration respectively as regards such chattels.

Transfers need not be attested

12. A transfer of a registered bill of sale need not be attested under this Ordinance, but the transferee of such bill of sale shall within seven clear days after the execution of such transfer file with the Registrar a certificate in Form 1 in the Second Schedule, stating the date of the bill of sale and of the last registration thereof, the names, residences and occupations of the parties thereto as stated therein, the names, residences and occupations of the parties to the transfer and that the said bill of sale is still a subsisting security, and shall also produce at the same time to the Registrar the said transfer, otherwise the said transfer shall be void.

Renewal of registration

13.—(1) The registration of a bill of sale shall be renewed once at least every twelve calendar months, and if a period of twelve calendar months elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal, as the case may be, the registration shall become void.

(2) The renewal of a registration shall be effected by filing with the Registrar a certificate in Form 2 in the Second Schedule, stating the date of the bill of sale and of the registration thereof and the names, residences and occupations of the parties thereto as stated therein and that the bill of sale is still a subsisting security.

The register

14.—(1) The Registrar shall keep a book, hereinafter referred to as “the register”, and shall upon the filing of any copy of a bill of sale enter therein the name, residence and occupation of the grantor, or, in case the same is made or given by any person under or in the execution of any process, then the name, residence and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill is given and the date of the instrument and the date of registration and shall number all such bills registered in each year consecutively according to the respective dates of their registration.

(2) Upon the registration of a certificate of renewal the like entry shall be made, with the addition of the date and number of the

last previous entry relating to the same bill, and the copy of the bill of sale originally filed shall be thereupon marked with the number affixed to such certificate of renewal.

(3) Upon the registration of a certificate of transfer of a bill of sale an entry thereof shall be made in the register over against the last previous entry relating to such bill of sale.

Bill of sale to be stamped before registration

15. No bill of sale and no transfer of a bill of sale shall be registered unless the same is duly stamped in accordance with the written law for the time being in force relating to stamp duties.

Rectification of register

16.—(1) Any Judge, on being satisfied that the omission to register a bill of sale or a certificate of renewal or transfer thereof within the time prescribed, or the omission or mis-statement of the name, residence or occupation of any person, was accidental or due to inadvertence or to absence from Sarawak, may, in his discretion, order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence or occupation, or by extending the time for such registration on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit.

(2) Any application for the rectification of the register under this section shall be made in Chambers.

Entry of satisfaction

17.—(1) A Judge may order a memorandum of satisfaction to be written on any registered copy of a bill of sale upon being satisfied that the debt, if any, for which such bill was made or given has been satisfied or discharged.

(2) The Registrar may write a memorandum of satisfaction upon any registered copy of a bill of sale on a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale and verified by certificate being produced to him and on the original bill of sale being also produced to him.

Inspection of register and office copies

18.—(1) Any person shall be entitled to have an office copy of or extract from any registered bill of sale or registered certificate of renewal upon paying for the same at the rate of twenty-five sen for every folio of one hundred words or at such other rate as may be prescribed, and every such copy shall, until the contrary is proved, be evidence of the original and of the fact and date of registration as shown thereon.

(2) Any person shall be entitled at all reasonable times, subject to such regulations as are prescribed—

(a) to search the register on payment of a fee of twenty-five sen or such other fees as may be prescribed; and

(b) on a like payment in respect of each bill of sale inspected to inspect, examine and make extracts from any registered bill of sale:

Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration and satisfaction, to the names, addresses and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Certificates

19. Every certificate required by or for the purposes of this Ordinance shall be made before a Magistrate or a Registrar and shall be deemed to be a certificate within the meanings of sections 197 and 198 of the Penal Code [*Act 574*].

Registrar may draft documents

20. A Registrar may, on request and on payment of the prescribed fee, draft or assist in the drafting of a bill of sale or a certificate intended to be registered under this Ordinance:

Provided that neither the Registrar nor the Government of the Federation or of Sarawak shall be liable for any defect in any such bill of sale or certificate.

[Mod. F.L.N. 451/64].

Fees

21. There shall be charged in respect of the registration of bills of sale and other matters done under this Ordinance such fees as may be prescribed.

Rules

*22. The Minister may make rules generally for the purpose of carrying out the provisions of this Ordinance and, in particular, such rules may—

[Mod. F.L.N. 451/64].

(a) prescribe the form of the register and the mode in which the same is to be made and kept;

(b) prescribe the mode in which registration is to be conducted;

* See Bills of Sale (Fees) Rules, Vol. VIII of the 1958 Revised Edition, p. 55.

(c) prescribe the making of entries in the register of the satisfaction or discharge of the debt secured by a registered bill of sale; and

(d) prescribe the fees to be taken.

Saving

23. Section 9 shall apply to the seizing or taking possession of and sale of chattels comprised in any instruments of transfer, mortgage, charge, release or surrender registered under the Hire Purchase Registration Ordinance [*Cap. 71 (1958 Ed.)*] prior to the 1st day of June, 1949.

Sarawak Law

FIRST SCHEDULE

(Section 7)

BILLS OF SALE ORDINANCE**BILL OF SALE**

This Indenture made the _____ day of _____, 19____, between A.B. of _____ of the one part and C.D. of _____ of the other part, WITNESSETH that in consideration of the sum of _____ ringgit now paid to the said A.B. by the said C.D. (the receipt whereof the said A.B. acknowledges) (*or whatever else the consideration may be*) he the said A.B. does hereby assign unto the said C.D. all and singular the several chattels and things specified in the Schedule hereto annexed by way of security for the payment of the sum of _____ ringgit and interest thereon at the rate of _____ per cent per year, and the said A.B. does hereby agree that he will duly pay to the said C.D. the principal sum aforesaid, together with the interest then due, by equal payments of _____ ringgit on the _____ day of _____ (*or whatever else may be the stipulated time or times of payment*); and the said A.B. does also agree with the said C.D. that he will (*here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeasance of the security*).

Provided always that the chattels hereby assigned shall not be seized or taken possession of or sold except with the consent of the grantor or under an order of a court.

In Witness, *etc.*

Signed and sealed by the said

A.B. in the presence of me,
E.F. (*add witness's name,
address and description*),
after I had fully explained
to the said A.B. the nature
and effect hereof.

SECOND SCHEDULE

(Section 12)

Form 1

BILLS OF SALE ORDINANCE

(1958 Ed.).

CERTIFICATE OF TRANSFER OF BILL OF SALE

I, _____ of _____,
do certify that a bill of sale bearing date the _____
day of _____, 19____, and made between
*(insert the names, addresses and description of the parties to the original bill of
sale)* of the one part and _____ of the other part,
of which a copy was registered on the _____ day of _____, 19____,
at _____ as instrument No. _____, (and which was last
registered on the _____ day of _____, 19____, is still a
subsisting security and was by an indenture bearing date the _____ day of
, 19____, transferred to _____ of _____, which said indenture is now
produced and shown to me marked _____
Signed at _____
the _____ day of _____, 19____
in the presence of _____

Form 2

(Section 13)

BILLS OF SALE ORDINANCE

(1958 Ed.).

CERTIFICATE OF RENEWAL OF REGISTRATION

I, _____ of _____,
do certify that a bill of sale bearing date the _____ day of _____, 19____, and made between
(insert the names, addresses and descriptions of the parties to the original bill of sale) of the one part and _____ of
the other part, of which a copy was registered on the _____ day
of _____, 19____, at _____ as
instrument No. _____, is still a subsisting security.

Signed at _____
the _____ day of _____, 19____
in the presence of _____

