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THE DEVELOPMENT OF HIRE-PURCHASE IN SWITZERLAND

Switzerland is usually said to be "under-developed" with regard to hire-purchase. Owing to the lack of adequate statistics, it is unfortunately difficult to substantiate this view except by means of rough estimates. At the end of 1955, current hire-purchase business was estimated at 350 million francs. Some five years later, when preliminary discussions were started on a draft law, the estimate was raised to 500 millions. Lacking any better, we have used this figure for our comparative table.

There is, however, reason to doubt whether the estimate corresponds to the reality. A few towns publish statistics on the number and importance of sales transactions in which the seller has reserved his rights of ownership until such time as the buyer shall have paid the purchase price in full (such reservation being only binding in Switzerland if registered at the time with the authorities at the purchaser's place of residence). Now it can be seen that such registrations have increased markedly since 1958. There was an increase of 68% in the canton of Geneva from 1958 to 1961 and one of 43% in the canton of Basle-City between 1958 and 1960. It is very probable that there have been similar increases in other towns. Perhaps this rapid growth does not apply to the total of hire-purchase transactions, and of course things may well have moved more slowly in the country districts. All the same, the statistics on reservation of ownership rights clearly reveal the prevalent trend.

The canton of Basle-City publishes detailed statistics on hire-purchase sales with reservation of ownership rights. Between 1950 and 1960, the total of claims rose from 10.2 million francs to 25.8 million francs, and the average amount per registration from 1,365 to 2,885 francs.

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For the canton of Zurich, an interesting sidelight on the problem is given in the annual report for 1960 of the "Bank für Warenkredite AG.". In 1960, the lenders financing hire-purchase transactions and subject to the cantonal control office granted credits aggregating some 100 million francs. If we add the sums advanced by bodies not subject to cantonal control and by the retailers themselves, we obtain, for one year and one economic district only, a volume of credit of 160 to 180 million francs. Some few years ago, this sum would have been thought a reasonable estimate for the total of hire-purchase business in Switzerland.

It would seem, therefore, that the sum of about 500 million francs for current hire-purchase transactions must be a minimum. If we revert to the comparative table, it will be seen that indebtedness per head of population is similar in Switzerland to that in the other Continental countries. As for the current transactions measured in terms of the gross national product, Switzerland attains about the same level as France, whereas in Germany and Belgium the proportion is higher. Yet if the estimate is raised to 600 million francs, Switzerland overhauls France, Germany and Belgium where indebtedness per head is concerned. And at 700 million francs, Switzerland would also lead these countries on the basis of hire-purchase as a percentage of gross national product.

It would be foolish to pay too much attention to comparisons of this kind. The statistics given for Switzerland's neighbours are also approximative and the real quantities may be larger. Yet the orders of magnitude revealed by our study should not be lightly set aside and there is little real justification for assuming *a priori* that hire-purchase is less developed in Switzerland than elsewhere in Europe. This fact should be taken to heart by all the newcomers, whether Swiss or foreign, to hire-purchase finance who are tempted to take a bold plunge on the theory that Switzerland is "under-developed" in this sphere. There are, indeed, signs here and there of a certain saturation in the hire-purchase market.

The Necessity for Federal Legislation

Whereas most foreign countries, some for many years, have laws dealing with hire-purchase, Switzerland did not until recently think it necessary to have special and detailed provisions on the subject. Previously, the only Federal legislation applicable to sales on the instalment system were articles 226 to 228 of the code of obligations relative to the rights of the seller and to the exigibility clause, articles 715 and 716 of the civil code on the reservation of ownership rights and article 157 of the penal code aimed quite generally at usury. At the cantonal level, there were isolated regulations mostly promulgated in the interests of a better control of commercial practice. Mention must also be made here of the 1957 intercantonal agreement on excessive interest rates. This agreement extends to half-a-dozen cantons and, in particular, fixes a maximum rate of interest (including charges) of 1½% per month.

Though the development of hire-purchase has been less spectacular in Switzerland than in the English-speaking countries and though Helvetian liberalism shrinks from any avoidable interference by the state, the necessity for a uniform and efficacious legislation in time became obvious. This was first clearly seen by public opinion in 1941 in connection with the financial difficulties experienced by the families of mobilized soldiers. Eight years later, the bankruptcy of a furniture factory that had been using as working capital the advance payments made by over 500 small savers once again drew attention to the urgency of the matter. In parliament, questions were asked and demands made. Preliminary work on draft legislation was begun in May 1955. As for the draft law itself, chiefly the work of Mr. H. Stofer, president of the civil court of Basle, it was completed in 1958 and laid before parliament by the Federal Council on 26th January, 1960.

It is important to remember that the new law concerns two quite distinct things: sales on the instalment plan, and sales against prepayment. To employ the very words of the law, "in the case of a sale on the instalment plan, the seller undertakes to supply a chattel to the buyer before the latter has paid the full price, and the buyer to settle the price by means of part payments", whereas "in the case

of a sale against prepayment, the buyer undertakes to pay the price of a chattel by means of instalments paid in advance, and the seller to supply the chattel to the buyer once the price has been paid in its entirety". The institution of sales against prepayment is of much less importance than that of sales on the instalment plan. However, it often proves attractive to financially weak buyers. Current business done in this way is estimated at between 150 million and 300 million Swiss francs. The objects of these deals are usually furniture, sewing machines and trousseaux. Experience shows that this type of sale is fraught with some risk for the buyer, especially if the prepayments are not guaranteed. It is in fact the abuses in this sector that gave the main impetus to the movement of opinion that led to legislation.

The fundamental economic difference existing between the sale on the instalment plan and the sale against prepayment (the former has an inflationary and the latter a deflationary effect) proves that the new law has a social and not an economic purpose. Above all, the purchaser, who is indubitably the weaker of the two parties concluding a hire-purchase contract, must be better protected. Provisions such as those limiting the duration of contracts and rendering obligatory a fixed initial payment naturally have general economic consequences. But the new law is by no means intended to provide an instrument of economic policy enabling the authorities, as is the case in other countries, to check or stimulate economic activity by facilitating or discouraging sales on hire-purchase.

The Principal Features of the New Law

In actual fact, the law does not take the form of an entirely new text. It merely modifies the existing provisions in the code of obligations. Articles 226 to 228 of this code, which have been completely reworked and are now very long, concern sales on the instalment plan (art. 226), sales against prepayment (art. 227) and provisions common to both types (art. 228). Article 219 of the law on suits for debt and bankruptcy, and articles 1 and 13 of the law on unfair competition have also been extended. For the sake of completeness, it may be noted that the draft law included revised texts of articles 715 and 716 of the civil code, dealing with the reservation of ownership rights, but parliament finally decided not to modify the existing law on these matters. Quite surprising is the active part played by the Federal parliament, and in particular its lower house the National Council, in the establishment of the final text of the law on hire-purchase. Although the subject was highly technical and, to save time, no commission of experts had been appointed, the debates were very lively and the draft law was modified on more than one count. These changes nearly all tended towards an even greater protection of the buyer — sometimes, it must be conceded, at the expense of strict legal consistency.

No word-by-word statement of and commentary on the new law will be given here. It will be enough to extract the guiding principles, certain of them being quite bold innovations.

The law begins by insisting on a *written agreement*. In the case of a sale on the instalment plan, the contract, if it is to be valid at law, must mention *inter alia* the object of the sale, the cash price, the surcharge for hire-purchase

(in francs, not as a percentage!), the right of the purchaser to withdraw from the contract and, eventually, the reservation of ownership rights, the assignment of the seller's claim against the purchaser and the assignment of the purchaser's salary. In the case of sales against prepayment, mention must be made of the total claim of the seller, the name of the bank entitled to receive the prepayments and the rate of interest to which the purchaser is entitled.

The validity of a purchase by a married buyer is subject to the *written consent of the spouse*, if husband and wife are living together and if the amount involved exceeds one thousand francs. If the purchaser is a minor, the consent of his or her legal representative is required. On this point, the views of the National Council finally prevailed, although the draft law drew attention to the legal complexities consequent on such a clause and the Council of States remained in opposition to the bitter end. Social considerations overcame those of a legalistic or practical nature.

An interesting and from the legal point of view rather revolutionary innovation is the provision of a *period of grace for reflection*, during which the purchaser may withdraw from the contract. This only becomes valid, where the rights of the seller are concerned, five days after the purchaser has received a copy signed by all the parties. During this period, the purchaser may still write to the seller and declare that he does not wish the contract to enter into force. Any previous renouncement of this right is null and void, and no penalty may be claimed if the buyer withdraws. This is certainly the most novel and the most important provision of the new law. It will automatically reduce the turnover of all manufacturers employing doubtful methods of salesmanship. Here, too, the Federal parliament went beyond the original draft, which only provided three days for reflection.

The law also regulates the *initial payment* and the *period of validity* of the contract. In the case of hire-purchase, the buyer must, at the latest when taking delivery of the goods, make an initial payment of one fifth of the cash price and work off his remaining debt within two and a half years reckoned from the signature of the contract. The seller who delivers the goods before having received the whole of the initial payment loses every legal right to the part of this instalment not yet transferred to him. In the case of sales against prepayment, the obligation to pay instalments cannot last longer than five years.

The right to *annul or denounce the contract* (not to be confused with the right to withdraw within five days) is defined in considerable detail, both in the case of hire-purchase when, under certain circumstances, it falls to the seller and in that of the sale against prepayment when it falls to the buyer. The law also limits claims for interest, for damage caused to the object of the sale, for non-performance of contract or for any penalty.

Sales against prepayment, because of the many possible abuses, are regulated with particular care. The essential point is the *security of the payments* already made. When the contract is to run for more than a year or for an indeterminate period, the buyer must make the payments to a bank named in the contract and subject to the Federal

banking law. The payments are credited to a savings or deposit account in the name of the buyer, bearing interest at the customary rate. Withdrawals are subject to the approval of both parties. The buyer may, at any moment and subject to a normal lapse of time for delivery, *demand that the object of the sale be handed over* against payment of the whole price. The *fixing* and the *payment of the price* are also subject to certain conditions.

The new law contains further provisions applying both to hire-purchase and to sales against prepayment. We shall merely enumerate them, although they are important for the effective legal protection of the buyer. These provisions deal with the limitations of the assignment of claims, the prohibition of clauses restricting legal competence to certain courts of law, and with the tardiness of buyers in meeting instalment payments.

* * *

Swiss legislation on hire-purchase is the result of a compromise. The long period of incubation proves this. The interested parties have been consulted, the debates in parliament were no mere formality. They lasted a whole year and nearly all the articles of the draft have been more or less profoundly modified. The press intervened in the debate, and certain views first expressed in print did not remain unheeded. All this explains why the law is perhaps not a model of logical and legal consistency.

All the same, the work has not been in vain. A law had to come sooner or later. The resulting instrument is satisfactory, despite the lengths to which it goes to protect the purchaser. Its principles will, it seems, be approved by all sound businesses selling on the instalment system. Past experience showed that the abuses practised by a small

minority could bring discredit to a whole sector of commerce. And in any case the suit has been heard: the new law is backed by pretty well the whole of public opinion.

As for the banks, if we except certain houses specialized in hire-purchase finance, they are scarcely touched by the new legislation. At the most, they will receive a few additional deposits deriving from the obligation to make prepayments to the credit of a savings or deposit account. Personal credit granted by the banks does not come under the new law, whatever be the purpose to which beneficiaries devote the sums obtained. In this connection, it may be mentioned that the banks were relieved to see dropped a provision in the draft nullifying advances if the lender knew or could presume from circumstance that the borrower was obtaining in this way the money required to make an initial payment under a hire-purchase contract.

A word still about the attitude of the Swiss banks to consumer credit. It has sometimes been averred that the big commercial banks are hostile to such credit. This is incorrect. The Swiss banks do their best to further small credit business, not because of any considerable financial gain to be obtained thereby — such advances scarcely pay their way in a big bank, owing to the relatively large amount of work involved — but because they wish to show that banks serve the whole community. This said, it remains obvious that it is not always desirable to foster consumer credit. This is especially the case under boom conditions when the economy needs sedatives rather than stimulants.

(By courtesy Swiss Bank Corporation
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