Motor Vehicle Dealers

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Motor Vehicle Dealers Act 1986

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The Motor Vehicle Dealers Act 1986 No 16 was assented to on 6 August 1986 and commenced on 2 November 1986, as amended by:

Amending Legislation	Date of Assent	Date of Commencement
Motor Vehicle Dealers Amendment Act 1987 No 21	4 December 1987	1 January 1988
Consumer Guarantees Act 2008 No 21	26 November 2008	s 50: 1 December 2008

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An Act to make provision for the licensing and disciplining of motor vehicle dealers and their staff, and to reform the law relating to contracts for the sale of motor vehicles by dealers, in order to promote and protect the interests of consumers.

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1 Short title and commencement

(1) This Act may be cited as the Motor Vehicle Dealers Act 1986.

(2) This Act comes into force on a date to be appointed by the Queen's Representative, by Order in Executive Council, and different dates may be so appointed in respect of different provisions of this Act.

2 Interpretation

(1) In this Act, unless the context otherwise requires—

approved salesman means a person who has been approved under Part 3 as a motor vehicle salesman

branch office, in relation to an application for a licence or to a licensee, means every place of business, (other than the applicant's or licensee's principal place of business) in respect of which the applicant or licensee is required to hold a licence under this Act

branch manager, in relation to any branch office of a licensee, means the person for the time being approved under Part 3 to conduct the licensee's business as a dealer at that branch office

car consultant means a person who for rent, fee, commission, or any other valuable consideration is engaged by any other person (not being a licensed motor vehicle dealer) to advise or to act as agent for that person, not being a matter relating solely to the structural, material or mechanical condition of the motor vehicle. If the consultant is employed or rewarded by the vendor, they are deemed jointly and severally liable with the vendor in any action resulting out of the application of this Act

certificate of approval means a certificate of approval issued under section 61

chief executive officer, in relation to a licensee company—

(a) in any case where the company conducts business only as a motor vehicle dealer, means the chief executive officer of the company, however designated; or

(b) in any case where the company carries on any other business in addition to the business of a motor vehicle dealer, means the chief executive officer of the company, however designated, in respect of the company's motor vehicle dealer's business,—

and includes any other person approved under section 50(2) to conduct the company's business as a motor vehicle dealer at its principal place of business;

contract of sale, in relation to a motor vehicle, includes contract to exchange or lease the motor vehicle

crime against the person means any crime described in section 141, 142,, or 148 or in Part 8 of the Crimes Act 1969, except a crime described in sections 171 to 177, 202 to 207, or 227 to 229 of that Act

crime involving dishonesty means any crime described in sections 239 to 315 of the Crimes Act 1969

defect, in relation to any motor vehicle sold or offered for sale by any licensee, means any structural or mechanical flaw or malfunctioning that, having regard to the age of the motor vehicle, the total distance travelled by it, and the price obtained or sought for it by the licensee, has adversely affected or is likely to adversely affect—

(a) the safety or roadworthiness of the motor vehicle; or

(b) the market value of the motor vehicle; or

(c) the serviceability of the motor vehicle—

but does not include any panel repair or any damage caused by corrosion unless, by reason of that repair or damage, the motor vehicle is not in the condition required for the issue of a warrant of fitness in accordance with Transport Act 1966

engine capacity, in relation to the engine installed in a motor vehicle—

(a) in any case where the total piston displacement of the engine has been specified by the manufacturer in cubic centimetres and the engine has not subsequently been modified in respect of its piston displacement, means the total piston displacement of that engine as so specified:

(b) in any case where the total piston displacement of that engine has been specified by the manufacturer in cubic inches and the engine has not subsequently been modified in respect of its piston displacement, means the total piston displacement as so specified, multiplied by 16.37 but rounded to the nearest complete multiple of 50:

(c) in any other case, means the total piston displacement of the engine as determine by the Secretary for Trade, Labour, and Transport

finance company includes any person, or any body of persons whether incorporated or unincorporated, whose ordinary business is not that of dealing in motor vehicles but who, in the course of his or her or its ordinary business, purchases, exchanges, or takes by way of assignment any motor vehicle for the purpose—

(a) of letting or hiring it to any other person under a hire purchase agreement; or

(b) of effecting a security over it; or

(c) of leasing it to any other person without conferring on that person the right to purchase the motor vehicle—

or sells any motor vehicle purchased, exchanged, or taken by way of assignment for any of those purposes, or pursuant to a right of sale conferred by a hire purchase agreement, or an instrument of security, or a lease

Fund means the Motor Vehicle Dealers Guarantee Fund established under section 29

hire purchase agreement has the meaning assigned to it by section 2 of the Hire Purchase Act 1986

invalid carriage means a vehicle which is drawn or propelled by a mechanical power, and which is specially designed and constructed, and not merely adapted, for the use of persons suffering from a physical defect or disability

leases in relation to a motor vehicle, means grants a lease of that vehicle

licence means a motor vehicle dealer's licence issued under section 19 and **licensee** has a corresponding meaning

licensee company means a company that is for the time being the holder of a licence under this Act

Licensing Authority means the Motor Vehicle Dealers Licensing Authority appointed under section 11

manufacturer means a person who engages in the business of manufacturing or assembling motor vehicles

Minister means the Minister of Trade, Labour, and Transport

model designation, in relation to a motor vehicle of a particular origin, means the combination of the trademark name and the words, symbols, and series identification used by the manufacturer to identify a vehicle of that model

motor vehicle means a vehicle that is drawn or propelled by mechanical power, other than,—

(a) a vehicle running on rails; or

(b) an invalid carriage; or

(c) a steam roller; or

(d) an aircraft; or

(e) a concrete mixer; or

(f) an omnibus; or

(g) a go-kart; or

(h) a motor mower; or

(i) a specialised vehicle designed exclusively or principally for use in connection with forestry, sawmilling or logging, fire fighting, ditch digging, drilling or boring, mining, tunnelling, road construction or maintenance, earth moving, building construction or demolition, the loading or stacking of goods, or the carriage of liquids in bulk or of refrigerated goods; or

(j) a vehicle of any other class or description of vehicle declared by the Queen's Representative by Order in Executive Council, not to be a motor vehicle for the purposes of this Act

motor vehicle dealer has the meaning assigned to it by section 3

new motor vehicle means a motor vehicle that is not a secondhand motor vehicle

officer, in relation to a licensee company—

(a) in any case where the company conducts business only as a motor vehicle dealer, means every director, chief executive officer, and secretary of the company, and every other person, however designated, who is responsible for the management of the company:

(b) in any case where the company carries on any other business in addition to the business of a motor vehicle dealer, means every director, chief

executive officer, secretary, or other person, however designated, who is responsible for the management of the company's motor vehicle dealer's business

owner, in relation to a motor vehicle, means the person lawfully entitled to possession thereof, except where—

(a) the motor vehicle is subject to a bailment that is for a period not exceeding 28 days; or

(b) the motor vehicle is let on hire pursuant to the terms of a rental service licenced under the Transport Licensing Act 1967—

in which case **owner** means the person who, but for the bailment or letting on hire, would be lawfully entitled to possession of the motor vehicle; and **owned** and **ownership** have corresponding meanings

prescribed means prescribed by regulations made under this Act

principal place of business, in relation to an applicant for a licence or to a licensee, means the place of business named as the applicant or licensee's principal place of business in their application or licence, as the case may require

prospective salesman, in relation to an application for the approval of a salesman, means the person in respect of whom the application is made

Register means the Register of Motor Vehicle Dealers set up and maintained under section or as the case may require, the Register of Motor Vehicle Salesman set up and maintained under section 73

registered salesman means a person who for the time being is registered under Part 5 as a motor vehicle salesman

Registrar means the Registrar of Motor Vehicle Dealers appointed under this Act

reportable offence, in relation to any person, means—

(a) any crime against the person and any crime involving dishonesty of which that person has been convicted within the preceding period of 5 years; and

(b) any crime against the person and any crime involving dishonesty of which that person has been convicted and sentenced to detention for at lease 12 months in a penal institution within the preceding period of—

(i) 7 years; or

(ii) 3 times the number of complete years of detention which he or she has served in accordance with that sentence—

whichever is longer

salesman means a person employed by a licensee to conduct negotiations on behalf of the licensee for the purchase, sale, exchange, or lease of any motor vehicle; but does not include a branch manager employed by any licensee or an officer of a licensee company

secondhand motor vehicle includes a vehicle that has, at any time before being offered or exposed for sale, been registered under the Transport Act 1966 or any corresponding enactment of another country

sell, in relation to any motor vehicle, means sell, or offer to sell, or expose for sale that motor vehicle or any interest in that motor vehicle; and includes any

interest in that motor vehicle pursuant to a hire purchase agreement and **sale** has a corresponding meaning

subsidiary place of business, in relation to a licensee, means any place of business in respect of which, in accordance with any of the provisions of section 12 the licensee is not required to hold a licence

term, in relation to contract for the sale of motor vehicle, means a condition

trade owner, in relation to any motor vehicle, means any person who acquires that vehicle for the purpose of reselling it, or of letting or hiring it under a hire purchase agreement, or of effecting a security over it, or of leasing it to any other person without conferring on that person the right to purchase the motor vehicle

trailer means a vehicle without motive power that is drawn or propelled by a motor vehicle from which it is readily detachable; and includes a sidecar for a motor cycle

vehicle means a contrivance that is equipped with wheels or revolving runners upon which it moves or is moved

wholesaler means a person who engages in the business of selling new motor vehicles to licensed motor vehicle dealers, or to other persons who engage in that business

year means a period of 12 consecutive months commencing on 1 April.

(2) Where a motor vehicle dealer sells a motor vehicle to a finance company, whether as principal or agent, in the expectation that the finance company will resell or lease the motor vehicle to a particular person, and the finance company subsequently resells or leases the motor vehicle to that person, the motor vehicle dealer is deemed to have sold or leased the motor vehicle to that person.

3 Meaning of motor vehicle dealer

(1) Subject to the succeeding provisions of this section, and to section 4, in this Act the term **motor vehicle dealer** means any person who carries on the business of purchasing, selling, exchanging, or leasing motor vehicles (whether as principal or agent), whether or not that person carries on any other business; and includes a car consultant.

(2) Without limiting the definition in subsection (1), every person who holds themselves out to the public as being ready to carry on the business of purchasing, selling, exchanging, or leasing motor vehicles is deemed to be a motor vehicle dealer for the purposes of this Act.

(3) Every person who, in any period of 12 consecutive months commencing after the commencement of this Act, purchases, sells, exchanges, or leases more than 3 motor vehicles is presumed to be a motor vehicle dealer for the purposes of this Act, unless the person proves that they did not purchase, sell, exchange, or lease the motor vehicles for the primary purpose of gain.

(4) Nothing in subsection (3) applies to any trustee corporation (within the meaning of section 2 of the Trustee Act 1956 of the Parliament of New Zealand, as in force in the Cook Islands) that, in any period of 12 consecutive months commencing after the commencement of this Act, purchases, sells, exchanges, or leases more than 3 motor vehicles, otherwise than on behalf of the same person or estate, in the capacity of executor, administrator, trustee, guardian, manager, attorney, liquidator, or in any other fiduciary capacity.

(4A) Despite any other provision of this section, every person who carries on the business of renting motor vehicles and who, in any period of 12 consecutive months sells more than 3 motor vehicles used in connection with that business, is deemed to be a motor vehicle dealer for the purposes of this Act.

(5) Despite the foregoing provisions of this section, no person is deemed to be a motor vehicle dealer for the purposes of this Act by reason only of the fact that,—

(a) being a solicitor, the person acts, in the course of their business as a solicitor, as agent in respect of the purchase, sale, exchange, or lease of any motor vehicle, unless they are remunerated for so acting by commission in addition to, or instead of their professional charges:

(b) being a manufacturer or wholesaler, the person sells any motor vehicle to,—

(i) the Crown; or

(ii) any other wholesaler, or to a licensed motor vehicle dealer; or

(iii) any person who is or has been employed by the manufacturer or wholesaler:

(c) being a person carrying on business as a secondhand dealer, they purchase, in the course of their business as a secondhand dealer, any motor vehicle for wrecking or dismantling by that person:

(d) being a finance company, it purchases, sells, exchanges, or leases any motor vehicle in the ordinary course of its business as a finance company:

(e) in the course of carrying on any other business (not being the business of a motor vehicle dealer or a person who carries on the business of renting motor vehicles) the person—

(i) purchases any motor vehicle for use in connection with that business, with or without the intention of reselling it after such use: or

(ii) resells any such vehicle after using it as aforesaid.

[Section 3(4A): inserted, on 1 January 1988, by section 2(1) of the Motor Vehicle Dealers Amendment Act 1987 (1987 No 21).]

[Section 3(5)(e): amended, on 1 January 1988, by section 2(2) of the Motor Vehicle Dealers Amendment Act 1987 (1987 No 21).]

4 Sales of motor vehicles by auctioneers

(1) No auctioneer is deemed to be a motor vehicle dealer for the purposes of this Act by reason only of the fact that in the course of their business as an auctioneer they sell any motor vehicle if, in respect of such sale, they comply with subsection (2).

(2) Every auctioneer must keep in the prescribed form a record of every motor vehicle that they sell in the course of their business as an auctioneer.

(3) Every auctioneer must keep the record required to be kept by subsection (2) for a period of not less than 6 years after the making of that record, or after the making of the last entry in any book containing more than 1 such record.

(4) Every record required to be kept under this section, and every book containing more than 1 such record, must be open to inspection at all reasonable times by any member of the Police, who may make such copies thereof as he or she thinks fit.

(5) Every auctioneer commits an offence against this Act who,—

(a) fails to keep any record to which this section applies for the period required by subsection (3); or

(b) refuses or fails to produce to any member of the Police demanding the same any record or book of records required for inspection under this section and in their possession, custody, or control.

Part 1
Registration of motor vehicle dealers

5 Registrar of Motor Vehicle Dealers

The Secretary for Trade, Labour and Transport is the Registrar of Motor Vehicle Dealers under this Act.

6 Register of Motor Vehicle Dealers

(1) For the purposes of this Act the Registrar must set up and maintain a Register of Motor Vehicle Dealers.

(2) The Register must be open to inspection by the public during ordinary office hours on payment of the prescribed fee (if any).

(3) On payment to him or her of the prescribed fee, the Registrar must send to any person requesting the same in writing copy of any specified entry in the Register.

7 Registrar to record certain matters in Register

(1) Whenever the Registrar receives pursuant to this Act notice of the issue, renewal, or cancellation of a licence or certificate of approval, or of the suspension of a licensee or the holder of a certificate or approval, the Registrar must make an appropriate entry in the Register showing—

(a) in the case of the issue of a licence—

(i) the name and address of the licensee; and

(ii) the address of the licensee's principal place of business; and

(iii) the address of any subsidiary place of business and of any branch office; and

(iv) the name of the person approved by the Licensing Authority to be the branch manager of every such branch office; and

(v) the date on which the application was granted; and

(vi) where the licensee is a company, the name and address of its chief executive officer or the other person who will supervise, manage, and control the conduct of the licensee's business as a motor vehicle dealer at its principal place of business, and the name and address of each of its other officers:

(b) in the case of the issue of a certificate of approval,—

(i) the name and address of the holder; and

(ii) the name and address of his or her employer; and

(iii) the date on which the application was granted:

(c) in the case of the renewal of a licence or certificate of approval, the date on which the application was granted:

(d) in the case of the cancellation of a licence or certificate of approval or the suspension of a licensee or the holder of a certificate of approval,—

(i) the grounds on which the cancellation or suspension was made; and

(ii) the date on which it was made.

(2) The Registrar must also, in respect of any entry, record such other particulars as may be required by this Act or as may from time to time be prescribed.

8 Correction of Register

(1) If any person has been issued with a licence or certificate of approval under this Act by reason of any false or fraudulent representation of statement, or if any person not entitled to be issued with a licence or certificate of approval under this Act has one issued to him, the Registrar must cancel that licence or, as the case may require, that certificate, and cause the name of the licensee or holder to be removed from the Register; and the fact of the cancellation and removal must be notified by the Registrar in the Gazette.

(2) If any particulars appearing in the Register in respect of the qualifications of any licensed motor vehicle dealer are proved to the satisfaction of the Registrar to be, or are to the knowledge of the Registrar, false or erroneous in any respect, the Registrar must remove those particulars from the Register.

(3) Subsection (2) applies notwithstanding that at the time when the entry in the Register was made the motor vehicle dealer was actually possessed of the qualifications particulars of which appear in the Register, or that at the time the entry was otherwise correct.

9 Penalty for wrongfully procuring issue of licence, etc

Every person commits an offence and is liable to a fine not exceeding $1,000 who wilfully makes or causes to be made any false entry in or falsification of the Register, or who procures or attempts to procure for themselves or any other person to be issued with a licence, certificate of approval, or a renewal of a licence or certificate of approval, by making or producing or causing to be made or produced, any false or fraudulent representation or statement, whether verbally or in writing.

10 Lost licences or certificates

Where the Registrar is satisfied that any licence or certificate of approval has been lost he or she may, on payment to him or her of the prescribed fee (if any), issue to the holder of the licence or certificate of approval a substitute licence or certificate of approval.

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Part 2
Licensing of motor vehicle dealers

11 Motor Vehicle Dealers Licensing Authority

The Secretary for Trade, Labour, and Transport is the Motor Vehicle Dealers Licensing Authority for the purposes of this Act.

12 Motor vehicle dealers to be licensed

(1) Every person who carries on business as a motor vehicle dealer is required to hold a current licence under this Act.

(2) Where 2 or more persons carry on business as motor vehicle dealers in partnership with 1 another, each of those persons is required to hold a licence.

(3) Subject to subsections (4) and (5), where a motor vehicle dealer carries on business as such at more than 1 place a separate licence is required in respect of each such place of business.

(4) A separate licence is not required by a motor vehicle dealer in respect of any place of business situated within a radius of 5 kilometres from any other place of business in respect of which the dealer holds a licence.

(5) If, on an application in that behalf made to the Licensing Authority by a licensee in respect of any place of business or proposed place of business, the Licensing Authority is satisfied that, having regard to,—

(a) the locality of the place of business in relation to the licensee's principal place of business or any branch office of the licensee; and

(b) the volume of business transacted or likely to be transacted at that place of business; and

(c) such other matters as the Licensing Authority considers relevant,—

the licensee or, as the case may require, the person through whom the licensee conducts or will conduct their business as a motor vehicle dealer at that place of business is or will be able to personally supervise, manage, or control both the principal place of business or (as the case may require) the branch office and the place of business to which the application relates, the Licensing Authority may, by notice in writing to the licensee, make an order exempting the licensee from the requirements to hold a licence in respect of that place of business.

(6) Every person commits an offence and is liable to a fine not exceeding $2,500 who carries on business as a motor vehicle dealer at any place in respect of which the person is not licensed, unless they have been exempted from the requirements to hold a licence in respect of that place of business in accordance with subsection (5).

(7) In addition to any penalty that may be imposed under subsection (6), every person who commits an offence against this section is liable to forfeit to Her Majesty the Queen all money received by them by way of commission or profit for any services or work performed by them as an unlicensed motor vehicle dealer.

(8) All money forfeited to Her Majesty under subsection (7) is recoverable at the suit of Her Majesty in the High Court, and is recoverable in like manner as a fine.

13 Eligibility for licences

(1) Subject to this Act, every person who,—
(a) has attained the age of 21 years; or
(b) is a company,—

is eligible to apply for and obtain a licence under this Act.

(2) Despite anything in subsection (1), no person may apply for or obtain a licence under this Act if a motor vehicle dealer's licence previously held by them has been cancelled under section 86 within the preceding period of 12 months.

(3) No company may apply for or obtain a licence if a person who will be an officer of the company if the company is granted a licence is disqualified under subsection (2) from applying for or obtaining a licence in his or her own right.

(4) Every person who applies for or obtains a licence knowing that they are not eligible to obtain a licence under the foregoing provisions of this section commits an offence and is liable to a fine not exceeding $2,500.

14 Application for licence

(1) Every person who desires to obtain a licence must make application to the Licensing Authority in the prescribed form.

(2) Every application must state the following information—
(a) the full name, residential address, and occupation of the applicant:
(b) where the applicant is a company and the application relates to the company's principal place of business, the full name, residential address, and occupation of every person who will be an officer of company, and of every person who will be the company's chief executive officer, if the application is granted, and the nature of any other business carried on or proposed to be carried on by the company:
(c) where the application relates to a branch office, the full name, residential address, and occupation of the person who will be responsible for the conduct of the licensee's business as a motor vehicle dealer at that branch office if the application is granted:
(d) the address of every place of business from which the applicant proposes to carry on business, and, where the applicant proposes to carry on business from more than 1 place of business, which of those places is to be their principal place of business, which of those places is or are to be a branch office or branch offices, and which of those places is or are to be a subsidiary place or subsidiary places of business:
(e) such other matters as may be prescribed.

(3) The application may also state an address, other than residential address of the applicant, at which documents relating to the application may be served on him.

(4) The application must be accompanied by—
(a) the prescribed fee; and
(b) a declaration in the prescribed form to the effect that the applicant is eligible to apply for and hold a licence under this Act.

15 Public notice to be given

(1) Every applicant for a licence must cause a notice of the application in the prescribed form to be published twice, at an interval of not more than 14 days, in a daily newspaper or newspapers approved for the purpose by the Licensing Authority printed and circulated in the Cook Islands.

(2) Any person may, within 1 month after the date of the first publication of the notice, give written notice to the Licensing Authority of their desire to object to the issue of a licence to the applicant.

(3) No objection may be made under subsection (2), except on 1 or more of the following grounds—

(a) that under section 13 the applicant is not eligible to apply for or obtain a licence:

(b) where the applicant is a person other than a company, that the applicant is not, by reason of his or her personal character, fitness, or financial position, a proper person to be the holder of a licence:

(c) where the applicant is a company, that it is not, by reason of its financial position, or of the nature of any other business carried on or to be carried on by it, a proper person to be the holder of a licence:

(d) where the applicant is a company, that any person who will be an officer of the company if the application is granted is not, having regard to section 18(2) a proper person to be an officer of a licensee company:

(e) where the applicant is a company, that the person who will be the company's chief executive officer if the application is granted is not, having regard to section 17(2), a proper person to be the chief executive officer of a licensee company:

(f) where the application relates to a branch office, that the person who will be responsible for the conduct of a licensee's business as a motor vehicle dealer at the branch office is not, having regard to section 18(3), a proper person to conduct such business.

(4) Every notice of objection given under subsection (2) must state each ground on which the objection is made.

(5) The person giving the notice of objection must cause a copy of the notice to be served on the applicant within 7 days after giving it to the Licensing Authority.

16 Licensing Authority not to hear or consider an application until satisfied of certain matters

(1) The Licensing Authority must not hear or consider an application for a licence until satisfied that the applicant has—

(a) caused to be published a notice of the application in accordance with section 15(1); and

(b) paid the required contribution to the Fund in accordance with section 32.

(2) Despite subsection (1), no application for a licence may be heard or considered before the expiration of 1 month after the applicant has complied with the requirements of section 15(1).

17 Hearing of applicant

The applicant for a licence, and every person who has filed a notice of objection in respect of the application under section 15(2), is entitled to appear and be heard in respect of the application.

18 Evidence of suitability required

(1) The Licensing Authority must not grant an application for the issue of a licence to any person (other than a company) unless satisfied that the personal character, fitness, and financial position of the applicant are such that, having regard to the interests of the public, the applicant is a proper person to carry on the business of a motor vehicle dealer.

(2) The Licensing Authority must not grant an application for the issue of a licence to a company unless satisfied that,—

(a) no person who will be an officer of the company if the application is granted will be disqualified, under section 13, from applying for or obtaining a licence in his or her own right; and

(b) every such person is, by reason of his or her relevant business experience, judgement, and general knowledge, a proper person to be an officer of a licensee company; and

(c) the person who will be the company's chief executive officer if the application is granted—

(i) is not disqualified, under section 13, from applying for or obtaining a licence in his or her own right; and

(ii) is, by reason of his or her personal character and fitness, a proper person to be the company's chief executive officer; and

(d) the financial position of the company, and the nature of all other business that the company is carrying on or proposes to carry on, are such that, having regard to the interests of the public, the company is a proper person to carry on the business of a motor vehicle dealer.

(3) The Licensing Authority must not grant an application for the issue of a licence in respect of a branch office unless satisfied that the person who will be responsible for the conduct of the licensee's business as a motor vehicle dealer at the branch office if the application is granted,—

(a) is not disqualified, under section 13, from applying for or obtaining a licence in his or her own right; and

(b) is, by reason of his or her personal character and fitness, a proper person to be the branch manager of the branch office.

(4) In determining, for the purposes of any application, the fitnesses of any person, the Licensing Authority shall require to be satisfied that the person,—

(a) has adequate business experience in some relevant fact of the motor vehicle industry, and his or her judgement and general knowledge warrant the issue of a licence; or

(b) is an approved salesman, and has had in the period of 3 years immediately preceding the date of his or her application, not less than 2 years experience as a salesman employed by the holder of a licence.

(5) In considering the suitability of any applicant in regard to their financial position, the Licensing Authority shall require to be satisfied that the applicant has sufficient material and financial resources to enable them to comply with the requirements of this Act.

(6) Nothing in this section limits the discretion of the Licensing Authority to refuse to grant an application if the Licensing Authority is not satisfied that the applicant is a proper person to carry on the business of a motor vehicle dealer.

19 Grant of application and issue of licence

(1) If, after hearing an application for a licence and considering all objections (if any) to the issue of a licence to the applicant made in accordance with this Part of the Act, the Licensing Authority is satisfied that—

(a) this Act in relation to the application has been complied with; and

(b) the applicant or, as the case may require, the person who will be responsible for the conduct of the applicant's business as a motor vehicle

dealer at the branch office if the application is granted, is a proper person to carry on business, of a motor vehicle dealer; and

(c) every place of business from which the business of a motor vehicle dealer is to be carried on is suitable having regard to its location, the type of business to be carried on, its situation, and the nature and use of other premises and residences in the vicinity,—

on payment to him or her of the prescribed fee grant the application and issue to the applicant a licence in the prescribed form.

(2) The Licensing Authority must endorse on the licence the address of the principal place of business or branch office to which the licence relates, and each subsidiary place of business approved by the Licensing Authority under section 11(5).

(3) If, in any case to which subsection (1) applies, the Licensing Authority is not satisfied of the matters referred to in that subsection, the Licensing Authority must refuse the application and must notify the applicant accordingly. In such a case the applicant is entitled to a refund of all money paid by them by way of contribution to the Fund in accordance with section 32(2).

20 Licence to be held in licensee's own name unless Licensing Authority otherwise approves

(1) No licensee may carry on business as a motor vehicle dealer under any name or style that is not—

(a) their own name or style; or

(b) where the licensee is in partnership with any other person, the name or style of the firm or of 1 of the partners—

unless the name or style has first been approved by the Licensing Authority.

(2) An applicant for a licence, or a licensee, may at any time apply in writing to the Licensing Authority to approve a name or style for the purposes of subsection (1).

(3) The Licensing Authority must not approve a name or style under subsection (2) if he or she considers that the name or style so nearly resembles the name or style of any other person, firm, or company carrying on business as a motor vehicle dealer as to be likely to deceive, or that the name or style is that of any person, firm, or company,—

(a) whose licence has been surrendered under section 27; or

(b) whose application for a licence has at any time been refused, and who or which has not subsequently obtained a licence.

(4) Despite any of the foregoing provisions of this section, no licensee may carry on the business of a motor vehicle dealer under more than 1 name or style.

(5) Every licensee who contravenes subsection (1) or (4) commits an offence against this Act.

21 Effect of licence

(1) A licence authorises the licensee during the currency of the licence to carry on the business of a motor vehicle dealer at any place of business that is from time to time endorsed on the licence.

(2) A licence is personal to the licensee, and shall not be transferable or vest by operation of a law in any person other than the licensee.

(3) A licence, unless it is sooner cancelled, or the licensee is sooner suspended, under this Act, continues in force until the expiration of the year in respect of which it is issued, and may from time to time be renewed for the next succeeding year.

22 Renewal of licence

(1) An application for the renewal of licence must be made in the prescribed form to the Licensing Authority not earlier than 1 January and not later than 15 February preceding the date of the expiry of the licence.

(2) The Licensing Authority must not hear or consider an application for the renewal of a licence unless satisfied that the applicant has paid the required contribution to the Fund in accordance with section 32(1).

(3) The application must not be heard before the expiration of 1 month after the applicant has complied with subsection (2).

(4) Any person may, before the 7th day of March preceding the date of the expiry of the licence, give written notice to the Licensing Authority of that person's desire to object to the renewal of the licence on any of the following grounds—

(a) any of the grounds specified in section 15(3) in relation to objections to the issue of a licence to any person; or

(b) that the applicant has not properly supervised, managed, and controlled the conduct of their business as a motor vehicle dealer at their principal place of business and each of their branch offices, either personally or, in the case of a branch office, through the person for the time being approved by the Licensing Authority; or

(c) that the applicant has permitted any person other than an auctioneer, or a licensee, or a branch manager, or an approved salesman, employed by the applicant to act as their agent in the conduct of the applicant's business as a motor vehicle dealer,—

and section 15(3), with any necessary modifications, applies as if the notice of objection were a notice of objection to the issue of a licence.

(5) In any case where no notice is given to the Licensing Authority under subsection (4) or (5), the Licensing Authority must grant the application without further inquiry.

(6) Where a notice is given to the Licensing Authority within the time allowed, the application must be heard and determined by the Licensing Authority, and sections 16 to 18 with any necessary modifications apply as if the application were an application for the issue of a licence.

(7) An application for the renewal of a licence, or any objection to the renewal of a licence, may be heard and determined under this section notwithstanding that the application or notice of objection is not given by the date specified in this section if, the application or notice is given before the date of the expiry of the licence.

(8) Where an application for the renewal of a licence has been granted the Licensing Authority must, on payment to him or her of the prescribed fee, endorse the licence accordingly.

(9) Where an application for the renewal of a licence has been made but not determined before the date on which the licence would otherwise expire, the licence, despite section 21(3), continues in force until the application is determined.

23 Removal of licence

(1) Where a licensee intends to remove their business as a motor vehicle dealer from their principal place of business or any of their branch offices to any other premises, the licensee may apply to the Licensing Authority for permission to remove their licence to those other premises.

(2) Every licensee who desires to remove a licence under subsection (1) must apply to the Licensing Authority in the prescribed form.

(3) Sections 14 to 18 apply, so far as they are applicable and with the necessary modifications, as if it were an application for the issue of a licensee.

(4) If, after hearing an application for the removal of a licence and considering all objections (if any) to the removal of the licence made in accordance with this Part, the Licensing Authority is satisfied that the provisions of this Act in relation to the application have been complied with, and that the applicant or, in the case of a branch office, the person who will be responsible for the conduct of the applicant's business as a motor vehicle dealer if the application is granted is a proper person to carry on or to conduct the business of a motor vehicle dealer, the Licensing Authority must grant the application, and must notify the applicant in writing that the licence will be removed when the Licensing Authority has approved the new premises under subsection (5).

(5) In any case to which subsection (4) applies, the Licensing Authority, if satisfied that the premises to which the applications relates are suitable, having regard to their location, the type of business to the carried on, their situation, and the nature and use of other premises and residences in the vicinity, must,—

(a) approve that place of business; and

(b) on payment to him or her of the prescribed fee, endorse on the licence the address of the principal place of business or, as the case may require, the branch office to which the licence now relates, and each subsidiary place of business approved by the Licensing Authority under section 12(5).

(6) On the approval of the removal of a licence under this section the approval under section 12(5) of any subsidiary place of business to which that licence relates is deemed to be revoked.

24 Licensee not to enter into partnership, except with another licensee

(1) No licensee may, in respect of their business as a motor vehicle dealer, enter into partnership with any person knowing that that person is not a licensee.

(2) Every licensee who enters into partnership in contravention of subsection (1) commits an offence against this Act.

25 Persons not to act as officers of licensee company without Licensing Authority's consent

(1) No person may act as an officer or as the chief executive officer of a licensee company for any period in excess of 14 days without the approval of the Licensing Authority.

(2) An applicant for a licence or a licensee company may at any time apply to the Licensing Authority in the prescribed form for approval of any person for the purposes of subsection (1).

(3) The Licensing Authority must not approve of any person for the purposes of subsection (1), unless satisfied—

(a) that, taking into account the requirements of section 13(3), the company would still be qualified to apply for and obtain a licence; and

(b) that taking into account the requirements of section 18(2), the company would still be a proper person to carry on the business of a motor vehicle dealer.

(4) Every person who acts in contravention of subsection (1) commits an offence against this Act.

(5) Every licensee company that employs any person or permits any person to act as an officer or as the chief executive officer of the company in contravention of subsection (1) commits an offence against this Act.

(6) Despite the foregoing provisions of this section, where, for the purposes of subsection (1), an application for the consent of the Licensing Authority has been filed but not determined, the Licensing Authority may, in writing, authorise the licensee company to employ the person in respect of whom the application is made as an officer, or, as the case may require, the chief executive officer, for any period not exceeding 1 month, or such longer period as the Licensing Authority, on application made to him or her in that behalf, may allow.

(7) Despite anything in subsection (6), an authority given under that subsection shall in any event cease to have effect when the application for consent is determined.

26 Licensee not to conduct business at branch office otherwise than through person approved by Licensing Authority

(1) No licensee may conduct their business as a motor vehicle dealer at any branch office for any period in excess of 14 days otherwise than through the person or the time being approved by the Licensing Authority.

(2) A licensee may at any time apply to the Licensing Authority in the prescribed form for approval of any person for the purposes of subsection (1).

(3) The Licensing Authority must not approve of any person for the purposes of subsection (1), unless satisfied that, having regard to section 18(3), the person is a proper person to be the branch manager of the branch office.

(4) Every licensee which acts in contravention of subsection (1) commits an offence against this Act.

(5) Despite the foregoing provisions of this section, section 24(6) and (7), so far as it is applicable and with the necessary modifications, applies in respect of applications made under subsection (1).

27 Voluntary surrender of licence

(1) A licensee may at any time surrender their licence by forwarding a written notice to that effect, together with the licence, to the Licensing Authority.

(2) The Licensing Authority must endorse on the notice the date on which he or she receives it, and the licence, as from that date, ceases to have effect.

(3) The surrenderer of a licence under this section does not affect the licensee's liability—

(a) to pay any fees or other money payable or to be payable in accordance with this Act on or before the date on which the licence would, but for its surrender, expire:

(b) to perform any obligation required to be performed by them by or under this Act on or before that date:

(c) for any act done or default made before the date on which the licence ceased to have effect.

28 Temporary licence

(1) Any person who—

(a) in the case of licensee who is deceased, is his or her personal representative; or

(b) in the case of licensee company that is in liquidation or receivership, is the liquidator or receiver of that company, as the case may be—

may apply to the Licensing Authority in the prescribed form for authority to carry on or appoint some other person to carry on the licensee's business as a motor vehicle dealer for such period as the Licensing Authority determines, and the Licensing Authority may make such order as he or she thinks fit.

(2) While any person is carrying on any business pursuant to an order made under subsection (1), the person is for the purpose of this Act, deemed to be the holder of the licence.

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Part 3
Motor Vehicle Dealers Guarantee Fund

29 Motor Vehicle Dealers Guarantee Fund

(1) There is hereby established a fund to be called the Motor Vehicle Dealers Guarantee Fund.

(2) The Fund must be held by and administered by the Licensing Authority.

(3) The Fund consists of—

(a) all sums paid to or an account of the Fund by motor vehicle dealers as licence fees and contributions or levies under this Part:

(b) all interest from time to time accruing to the Fund as a result of investment of money in the Fund:

(c) any other money that may be lawfully paid into the Fund.

30 Expenditure from Fund

(1) There shall from time to time be paid out of the Fund, as required—

(a) the amount of all claims, including costs, allowed or established against the Fund in accordance with this Act:

(b) all legal expenses incurred in defending claims made against the Fund, or otherwise incurred in relation to the Fund:

(c) all premiums payable in respect of contracts of insurance entered into by the Licensing Authority under section.

31 Audit of accounts

The accounts of the Fund must be audited by a member of the office of Audit and Inquiries.

32 Motor vehicle dealers to contribute to Fund

(1) Subject to section 32, every motor vehicle dealer, on making application in any year for a licence or the renewal of a licence, must pay to the Licensing Authority the following sum:

(a) on application for the issue of a licence, the sum of $2,000 in the case of a person carrying on business as a motor vehicle dealer on the island of Rarotonga or having a branch office on the island of Rarotonga. In the case of a person carrying on business as a motor vehicle dealer on any island other than Rarotonga, the sum of $200:

(b) on application for the renewal of licence the sum equal to a percentage fixed by the Queen's Representative by order in Executive Council of the amount of the gross sales of motor vehicles made by the licensee during the preceding year. Provided that no sum is payable by a licensee in respect of the first and second renewal of their licence.

(2) Where any motor vehicle dealer who for any year has paid the amount prescribed by this section remains in business as such for less than 3 months in that year, the Licensing Authority may, out of the money received by him or her under subsection (1), refund to the motor vehicle dealer such portion of the amount paid as he or she thinks fit.

[Section 32(1)(a): amended, on 1 January 1988, by section 3 of the Motor Vehicle Dealers Amendment Act 1987 (1987 No 21).]

33 Motor vehicle dealer may be required to pay levy

(1) If at any time the Fund is not sufficient to satisfy the amount payable out of the Fund, the Licensing Authority may impose on every licensed motor vehicle dealer, for payment into the Fund, a levy of such amount as he or she thinks fit, not exceeding $150.

(2) The amount of every such levy becomes payable on a date and in a manner fixed by the Licensing Authority, and, if not paid earlier, must be paid together with the next annual fee payable to the Fund under this Act.

34 Investment of Fund

Any money in the fund that is not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorised to invest trust funds:

Provided that the Licensing Authority must at all times retain in the Fund at call at least $20,000.

35 Application of Fund

Subject to this Part, the Fund must be held and applied for the purpose of reimbursing any person who has suffered loss by reason of—

(a) any cheque drawn by a licensee in payment or part payment for a motor vehicle having been dishonoured on presentation:

(b) the breach by a licensee of section 53 or 54, relating to the duties of a licensee to account for money received by him or her as an agent:

(c) the breach by a licensee of the term implied in contracts of sale of motor vehicles by section 65:

(d) the failure of a licensee to carry out any obligation imposed on him or her by section 68, relating to the repair or making good of defects:

(e) the breach by the licensee of the term implied in contracts of sale of category D motor vehicles by section 68(2):

(f) a motor vehicle as sold by a licensee being substantially different from the vehicle as represented in the notice attached to it in accordance with section 65(2):

(g) the breach by the licensee of any warranty implied in contracts for sale of motor vehicles by sections 14 to 16 of the Sale of Goods Act 1908 of the Parliament of New Zealand, as in force in the Cook Islands or the failure of any motor vehicle supplied by a licensee to comply with any guarantee set out in sections 5, 6, 8, 9, and 10 of the Consumer Guarantees Act 2008.

[Section 35(g): amended, on 1 December 2008, by section 50 of the Consumer Guarantees Act 2008 (2008 No 21).]

36 Claims against Fund

(1) Subject to this section, the Licensing Authority may receive and settle any claim against the Fund at any time after the cause of the claim has arisen.

(2) No person is entitled to make a claim against the Fund—

(a) in respect of any act or thing done or omitted to be done before the commencement of this Part; or

(b) except with leave of the Licensing Authority, in respect of any act or thing done or omitted to be done after the commencement of this Part unless written notice of the claim is given to the Licensing Authority—

(i) in respect of a claim under section 35(a), within 3 months after the cheque is dishonoured:

(ii) in respect of a claim under section 35(b), within 3 months after lawful demand for the money has been made and the licensee has failed to account:

(iii) in respect of a claim under any of paragraphs (c) to (g) of section 35, within 3 months after the date of the determination of the High Court given in respect of the subject-matter of the claim.

(3) A person is entitled to make a claim against the Fund notwithstanding that he or she is entitled to any other right or remedy in respect of the same cause:

Provided that no person is entitled to make a claim against the Fund under any of the provisions of section 35(c) to (g), except in respect of any loss found to have been suffered by him or her by the High Court.

(4) No finance company is entitled to make a claim against the Fund,—

(a) under section 35(a), (b), or (c), except in respect of any loss suffered by it and arising out of any hire purchase agreement, lease, purchase and resale, or other transaction the effect of which was to finance in whole or in part the purchase or lease by another person (not being a licensee) of a motor vehicle from a licensee:

(b) under paragraph (d), (e), (f), or (g) of that section in respect of any loss suffered by it in the ordinary course of its business as a finance company.

(5) No licensee or manufacturer or wholesaler is entitled to make a claim against the Fund under any of the provisions of section 35 in respect of any loss suffered by them in the ordinary course of their business as a licensee or manufacturer or wholesaler.

(6) No person is entitled to recover from the Fund an amount greater than the balance of the loss suffered by them after deducting from the total amount of their loss the amount or value of all money or other benefits received by them from any source other than the Fund in reduction of their loss, including any benefits received by reason of services rendered or payments made by the defaulting motor vehicle dealer or other person.

(7) Where a claim against the Fund is admitted by the Licensing Authority, there is payable out of the Fund interest on the amount of the claim so admitted from the date on which the claim was received by the Licensing Authority until the date on which the amount of the claim is paid to the claimant at the rate for the time being payable in respect of judgments entered in the High Court.

(8) In any action brought against the Licensing Authority in relation to the Fund, all defences that would have been available to the defaulting motor vehicle dealer are available to the Licensing Authority.

37 Subrogation of rights of action against defaulting motor vehicle dealers

(1) On payment out of the Fund of any money in settlent in whole or in part of any claim under this Part, the Licensing Authority is subrogated, to the extent of that payment, to all rights and remedies of the claimant against the motor vehicle dealer in relation to whom the claim arose, or in the event of the death or disability of the motor vehicle dealer, against his or her personal representatives or other persons having authority to administer his or her estate, and to all other rights and remedies whatsoever of the claimant in respect of the act or thing done or omitted to be done to which the claim relates.

(2) Despite anything to the contrary in the Companies Act 1955 of New Zealand (as in force in the Cook Islands), or in any other Act or in any rule of law, if a claim is made against the Fund in respect of any act or thing done or omitted to be done by an officer, employee, or agent of a licensee company, the High Court may, if it thinks fit, on the application of the Licensing Authority declare that any person who was knowingly a party to the act or omission is personally responsible, without any limitation of liability, for the repayment to the Fund of the amount paid from the Fund in settlement of the claim.

(3) Despite anything in the Companies Act 1955 of the Parliament of New Zealand (as in force in the Cook Island), or any other Act or in any rule of law, all sums that the Licensing Authority is entitled to recover from a defaulting licensee company under this section must, in the event of the winding up of the company, be paid in priority to all other debts in accordance with section 308(1)(d) of the said Companies Act 1955, and the provisions of that section and of section 101 of that Act apply accordingly.

38 Provisions applicable if Fund insufficient to satisfy claims

(1) No money or other property belonging to the Fund is available for the satisfaction of any judgment obtained against the Licensing Authority in relation to the Fund, or for the payment of any claim allowed by the High Court, but, if at any time the Fund is not sufficient to provide for the satisfaction of all such judgments and claims, they must, to the extent which they are not so satisfied, be charged against future accumulations of the Fund.

(2) The Licensing Authority, having regard to the rules set out in subsection (3), may determine the order in which judgments and claims charged against the Fund are satisfied, and may, if the amount accumulated is not sufficient to satisfy all such judgments and claims in full, satisfy any such judgments or claims in whole or in part.

(3) Without limiting the discretion of the Licensing Authority he or she shall, in applying the Fund towards the settlement of any such judgments and claims as aforesaid, have regard to the following rules—

(a) the Licensing Authority shall take into consideration the relative degree of hardship suffered or likely to be suffered by the several claimants in the event of their claims against the Fund not being satisfied in whole or in part:

(b) claims for amounts not exceeding $1,000 shall, except in special circumstances, be satisfied in full before claims for amounts exceeding $1,000 are satisfied to a greater extent than $1,000:

(c) where all other considerations are equal, claimants have priority as between themselves according to the dates of the judgments or the dates when the claims were received by the Tribunal, as the case may require.

39 Licensing Authority may enter into contracts of insurance

(1) Despite any of the foregoing provisions of this Part, the Licensing Authority may, in his or her discretion, enter into any contract of insurance with any person carrying on fidelity insurance business in the Cook Islands, or New Zealand whereby the Licensing Authority will be indemnified to the extent and in the manner provided by the contract against liability to pay claims under this Part.

(2) Any such contract may be entered into in relation to licensed motor vehicle dealers generally, or in relation to any licensed motor vehicle dealer or dealers named therein.

(3) No action lies against the Licensing Authority or against any officer of the Department of Trade, Labour, and Transport for injury alleged to have been suffered by any motor vehicle dealer by reason of the publication in accordance with fact of a statement that any contract of insurance entered into under this section does or does not apply to that motor vehicle dealer:

Provided that, in the event of any contract of insurance being entered into in respect of any specified motor vehicle dealer or dealers, the Licensing Authority shall, on the application of any other motor vehicle dealer, enter into a like contract of insurance in respect of last mentioned motor vehicle dealer if the insurer signifies his or her or its willingness to enter into such a contract on like terms and conditions.

(4) All money paid to the Licensing Authority in accordance with any contract of insurance entered into by the Licensing Authority must be paid into the Fund, and must be applied in or towards the settlement of relevant claims.

(5) No claimant against the Fund has any right of action against any person with whom any such contract of insurance was entered into, or have any right to claim any money paid by that person in accordance with the contract.

40 Licensing Authority may take possession of and inspect licensee's books and documents

(1) This section applies in any case where the Licensing Authority is satisfied, in respect of any licensee—

(a) that there is reasonable cause to believe that he or she, or, in the case of licensee company, any officer, has done or omitted to do any act or thing, in respect of which act or omission a claim may be against the Fund; or

(b) that he or she has died; or

(c) that, being a licensee company, it is being wound up, whether voluntarily or by order of the Court; or

(d) that his or her or its licence has been cancelled.

(2) In any case to which this section applies the Licensing Authority may, if he or she considers it is expedient to do so, take possession of and inspect any ledgers, books of account, records, deeds, or other documents belonging to the licensee, or held in the course of the licensee's business as a motor vehicle dealer in his or her possession or under his or her control, or, in the case of licensee company, in the possession or under the control of any officer or employee of the company.

(3) Every person having possession or control of any such ledgers, books of account, records, deeds, or other documents who refuses or fails without lawful justification to deliver them or cause them to be delivered to the Tribunal forthwith upon demand by the Council commits an offence and is liable to a fine not exceeding $2,000.

41 Further power to take possession of and inspect licensee's books

(1) If the Licensing Authority has reason to believe that any licensee has failed to comply with section 53 or 54 in respect of any money received by the licensee or on their behalf in the course of their business as a motor vehicle dealer the

Licensing Authority may, if he or she considers it is expedient to do so, take possession of and inspect any ledgers, books or account, passbooks, bank statements, cheques, or other records relating to any money received by the licensee or on their behalf in the course of their business as a motor vehicle dealer, whether the money has been paid into a private or a trust account at a bank or not.

(2) The power conferred on the Licensing Authority by subsection (1) is in addition to the power conferred on him or her by section 40(2).

(3) Every person having possession or control of any such ledgers, books of account, records, deeds, or other documents who refuses or fails without lawful justification to deliver them or cause them to be delivered to the Licensing Authority forthwith upon demand by the Licensing Authority commits an offence and is liable to a fine not exceeding $2,000.

42 Licensing Authority to give receipt for documents taken into possession

(1) Upon taking possession of any document under section 40 or 41, the Licensing Authority must forthwith serve upon the licensee concerned a notice giving particulars of the document and the date on which it was take into the Licensing Authority's possession.

(2) If any such document is the property of a firm of motor vehicle dealers in which the licensee is a partner, a copy of the notice must be served on each partner in the firm.

(3) Within 14 days after any such notice has been served, the licensee, or any of the licensee's partners, may apply to the High Court for an order directing the Licensing Authority to return any document specified in the order to the person from who it was received, or for such other order as the Court thinks fit.

43 Expenses of Licensing Authority in investigating affairs of motor vehicle dealer

The reasonable expenses of the Licensing Authority acting in the exercise of any of the powers conferred on him or her by sections 40 and 41 in respect of any licensee are recoverable from that licensee.

44 Appointment of authorised person to investigate affairs of motor vehicle dealers

(1) For the purposes of safeguarding the Fund, the Licensing Authority may at any time appoint a member of the New Zealand Society of Accountants to examine the accounts of licensees, and to furnish to him or her a confidential report of any irregularity in the accounts of any licensee or firm of licensees that may be disclosed by the examination, or as to any other matter that in the opinion of the person so appointed should, in the interests of the Fund, be further investigated.

(2) Every appointment under this section must be in writing and must be signed by the Licensing Authority.

(3) Upon production by any person so appointed of his or her letter of appointment, he or she is entitled, in respect of any licensee or firm of licensees, to exercise any of the powers conferred upon the Licensing Authority by sections 40 and 41.

(4) Every person having possession or control of any ledgers, books of account, records, deeds, or other documents relating to the business of any licensee or

firm of licensees referred to in subsection (3) who obstructs or hinders the person appointed under this section or who refuses or fails without lawful justification to deliver them or cause them to be delivered to the person appointed under this section to examine them forthwith upon demand by that person commits an offence and is liable to a fine not exceeding $2,000.

(5) The person so appointed to make any examination of accounts for the purposes of this section must not, otherwise than in the course of his or her report to the Licensing Authority, communicate to any person any matter that may come to their knowledge in the course of their examination.

(6) The Licensing Authority may disclose the contents to any member of the Police, or to the Solicitor General.

(7) No officer of the Trade, Labour, and Transport Department may communicate to any person any information disclosed in the report, except in the performance of his or her duty.

45 Acts or omissions of manager, salesman, employee, or agent deemed to be acts or omissions of licensee

For the purposes of this Part, any act or thing done or omitted to be done, or suspected of having been done or omitted to be done, by any manager employed by a licensee in respect of any of the licensee's branch offices, or by any salesman or other employee or agent of the licensee, not constituting an offence against any of the provisions of this Part, are deemed to have been done or omitted to be done, or to be suspected to having been done or omitted to be done, by the licensee.

46 Regulations for purposes of this Part

Regulations may be made under section 114 for all or any of the following purposes—

(a) providing for the investment of so much of the Fund as is not immediately required for the purposes thereof:

(b) prescribing the forms of notices to be given to the Licensing Authority in relation to claims against the Fund, and the conditions subject to which and the extent to which the Licensing Authority may settle any such claims without recourse being had to legal proceedings:

(c) prescribing the duties of an accountant appointed to conduct an examination of, any accounts under section 44; and prescribing also the corresponding duties of a licensee concerned or, in the case of a licensee company, the duties of the officers and employees of the company, and the circumstances in which that licensee may be required to pay the cost of the examination:

(d) generally, for such other matters as may be considered necessary for the purpose of protecting the Fund, or of giving full effect the intent of this Part.

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Part 4
Duties of motor vehicle dealers

47 Licensee to conduct business at principal place of business, branch office, or subsidiary place of business only

(1) No licensee may carry on business as a motor vehicle dealer at any place of business other than his or her principal place of business, a branch office, or a subsidiary place of business.

Provided that this subsection does not prohibit a licensee from purchasing or carrying on negotiations to purchase any motor vehicle at any other place.

(2) Every licensee who carries on business as a motor vehicle dealer in contravention of subsection (1) commits an offence against this Act.

(3) Nothing in this section limits or affects the right of a licensee, in the ordinary course of their business as a motor vehicle dealer, to engage or make use of the services of an auctioneer, or to sell any motor vehicle at any agricultural and pastoral show, trade fair, or other agricultural, industrial, or commercial exhibition held wholly or partly for trade purpose.

48 Licensee to display notice on place of business, etc

(1) Every licensee must exhibit and keep exhibited in a prominent place at each of their places of business, so as to be read easily from outside the place of business, a notice of the name or style under which they carry on business as a motor vehicle dealer (being the name or style approved by the Licensing Authority under section 21) and of the fact that they are a licensed motor vehicle dealer.

(2) The information referred to in subsection (1) must also be clearly shown on all notices, advertisements and other publications issued by or on behalf of the licensee, and in all letters, accounts, agreements, and other documents sent out, entered into, or published by or on behalf of the licensee in the course of or in connection with their business as a motor vehicle dealer.

(3) It is deemed a sufficient compliance with the provisions of this section requiring a licensee to exhibit at any place or show on any document the fact that they are a licensed motor vehicle dealer if they exhibit at that place or show on that document the letters "LMVD".

(4) Every licensee who fails to comply with subsection (1) or (2) commits an offence against this Act.

49 Licensee to have registered office

(1) Every licensee must have a registered office.

(2) Subject to subsection (3), the registered office is at the licensee's principal place of business.

(3) A licensee may at any time, by notice in writing given to the licensing Authority, change the address of the licensee's registered office to that of any of their branch offices.

50 Supervision of licensee's business

(1) Every licensee (other than a licensee company) must personally supervise, manage, and control the conduct of his or her business as a motor vehicle dealer at his or her principal place of business and at each subsidiary place of business named in the licence relating to his or her principal place of business.

(2) Every licensee company must ensure that its chief executive officer, or such other person as may be approved for the time being by the Licensing Authority, personally supervises, manages, and controls the conduct of the company's business as a motor vehicle dealer at the company's principal place of business and at each subsidiary place of business named in the licence relating to its principal place of business.

(3) Every licensee (including a licensee company) must, in respect of each branch office, ensure that the branch manager personally supervises, manages, and controls the conduct of the licensee's business as a motor vehicle dealer at the branch office and at each subsidiary place of business named in the licence relating to the branch office.

(4) For the purposes of subsections (1) to (3), a person is not deemed to be personally supervising, managing, and controlling the conduct of business at any place of business unless he or she is present and actively engaged in the conduct of business during a substantial part of the time when that place is open for business.

(5) Subject to section 52, every licensee who fails to comply with subsection (1) or (3) commits an offence against this Act.

(6) A licensee company may at any time apply to the Licensing Authority in the prescribed form for approval of any person for the purposes of subsection (2).

(7) The Licensing Authority must not approve of any person for the purposes of subsection (2), unless satisfied that, having regard to section 18(3), the person would, if the principal place of business were a branch office, be a proper person to be the branch manager of the branch office.

(8) Despite the foregoing provisions of this section, section 25(6) and (7), so far as it is applicable and with the necessary modifications, applies in respect of applications made under subsection (6).

51 Temporary absence or incapacity of licensee, etc

(1) Despite section 50, a licensee may at any time apply to the Licensing Authority for the approval of any person to act in his or her stead, or (as the case may require) in the stead of its chief executive officer or any of his or her or its branch managers, during the temporary absence or incapacity of the licensee or chief executive officer or branch manager; and in any such case, the Licensing Authority may grant his or her approval for such period and subject to such conditions as he or she thinks fit.

(2) The Licensing Authority must not approve of any person for the purposes of subsection (1), unless satisfied that, having regard to section 20, the person would, if the principal place of business were a branch office, be a proper person to be the branch manager of the branch office.

(3) Despite the foregoing provisions of this section, section 25(6) and (7), so far as it is applicable and with the necessary modifications, applies in respect of applications made under subsection (1).

52 Employment of salesmen

(1) No licensee may without the approval of the Licensing Authority given under Part 5, employ as a salesman any person who is not an approved salesman.

(2) Every licensee must keep in the prescribed form a list of approved salesmen currently employed by the licensee:
Provided that, where 2 or more licensees are in partnership with one another it is sufficient compliance with this subsection by each licensee if any one of the licensees keeps such a list.

(3) Every list required to be kept under subsection (2) must be open to inspection at all reasonable times by the Licensing Authority, and any person appointed to do so by the Licensing Authority.

(4) Every licensee commits an offence against this Act who—
(a) wilfully employs any person in contravention of subsection (1); or
(b) fails to keep a list of salesmen in accordance with subsection (2); or
(c) refuses or fails to produce the list on demand by the Licensing Authority, or by any appointee of the Licensing Authority.

53 Duties of licensees with respect to money received in course of business

(1) Subject to any authority or instruction given to the licensee by the person (in this section referred to as the principal) on whose behalf the licensee is acting or has acted, all money received by a licensee in respect of any transaction in their capacity as a dealer on behalf of the principal (less any fee, commission, or other charge for the licensee's services previously agreed upon by the licensee and the principal) must be paid by the licensee to the principal forthwith on demand by the principal or if no such demand is made, within a period of 7 days after the receipt of the money:
Provided that where, after reasonable inquiry, the principal cannot be found within that period, the licensee must pay the money to the principal as soon as the licensee becomes aware of the principal's whereabouts.

(2) No money to which this section applies is available for payment of the licensee's debts, nor is it liable to be attached or taken in execution under the order or process of the High Court at the instance of any of the licensee's creditor's.

(3) Where any licensee, in their capacity as a dealer and on behalf of any person, sells any motor vehicle and the purchase price or part thereof is satisfied by the trading-in of another motor vehicle, the purchase price, or, as the case may require, so much of the purchase price as is satisfied in that manner, is, for the purposes of subsection (1) deemed to have been received by the licensee in money.

(4) Every licensee who contravenes or fails to comply with any of the provisions of this section commits an offence, and is liable to a fine not exceeding $3,000.

54 Licensee to furnish account to principal

(1) Where a licensee purchases, sells, exchanges, or leases any motor vehicle on behalf of a principal, the licensee must forthwith on demand by the principal, or, if no such demand is made then within 7 days after the completion of the transaction render to the principal a written account setting out particulars of all money received by the licensee on the principal's behalf in respect of the transaction, and of the manner in which the licensee has applied any such money.

(2) For the purposes of this section, the completion of a transaction is deemed not to be dependent on the vendor of the motor vehicle giving to the Registrar of Motor Vehicles notice of change of ownership in accordance with section 13 of the Transport Act 1966.

(3) Every licensee who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding $3,000.

55 Licensee to keep record of transactions

(1) Every licensee must keep or cause to be kept in the prescribed form a record of—

(a) every motor vehicle that, in the course of their business as a motor vehicle dealer, the licensee purchases, or accepts for the purpose of selling, exchanging or leasing; and

(b) every transaction in which they have acted as a dealer in relation to any motor vehicle.

(2) Every licensee must keep the record required to be kept by subsection (1) for a period of not less than 6 years after the making of that record, or after the making of the last entry in any book containing more than 1 such record.

(3) Every record required to be kept under this section, and every book containing more than 1 such record, must be open to inspection at all reasonable times by the Licensing Authority or any person appointed to do so by the Licensing Authority who may make such copies thereof as he or she thinks fit.

(4) Every person commits an offence against this Act who—

(a) being a licensee, fails to keep any record required by this section to be kept by him; or

(b) refuses or fails to produce to the Licensing Authority or any appointee of the Licensing Authority demanding the same any record or book of records required for inspection under this section and in their possession, custody, or control.

56 Licensee to produce licence

(1) Every licensee must produce their licence for inspection whenever required to do so by the Licensing Authority, or by any person appointed by the Licensing Authority or to any member of the Police, and must also keep displayed in a prominent place in their principal place of business and in each branch office a copy of the relevant licence.

(2) Every licensee who fails to comply with subsection (1) commits an offence against this Act.

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Part 5
Approved salesmen

57 Application for approval of salesman

(1) An application for the approval of a salesman may be made to the Licensing Authority at any time by a licensee or an applicant for a licence.

(2) The application must be made in the prescribed form and accompanied by the prescribed fee.

(3) Where the application is made by an applicant for a licence, it must be attached to and form part of the application for a licence.

(4) The application must include the following information:

(a) the full name of the applicant and (where he or she is a licensee) the address of his or her registered office; and

(b) the full name, residential address, occupation, and date of birth of the prospective salesman; and

(c) such other information as may be prescribed.

(5) The applicant must cause a notice of the application in the prescribed form to be published twice, at an interval of not more than 14 days in a daily newspaper published in the Cook Islands.

(6) The application must not be heard or determined before the expiration of 1 month after the applicant has complied with subsections (5) and (6).

58 Temporary permission to employ salesman

(1) Despite section 52, where under section 57(1) an application for the approval of a salesman has been filed but not determined, the Licensing Authority may, in writing, authorise the applicant (and any partner of the applicant) to employ the prospective salesman for any period not exceeding 2 months, or such longer period as the Licensing Authority on application to him or her made in that behalf may allow.

(2) Despite subsection (1) an authority given under that subsection shall in any event cease to have effect when the application for approval is determined.

59 Objections to grant of application

(1) Within 1 month after the date of the first publication of the notice required by section 57(6), any person may give written notice to the Licensing Authority of their desire to object to the grant of the application.

(2) An objection under this section may be made only on the ground that the prospective salesman is not a proper person to be a motor vehicle salesman.

(3) Any person giving a notice under this section must cause a copy of the notice to be served on the applicant within 7 days after giving it to the Licensing Authority.

(4) Where any notice is given under this section the prospective salesman is entitled to appear and be heard as a party to the application.

60 Determination of application and issue of certificate of approval

(1) Where the Licensing Authority is satisfied in respect of an application for the approval of a salesman that this Part has been complied with, and that, having

regard to the interests of the public, the prospective salesman is a proper person to be a motor vehicle salesman, he or she must grant the application.

(2) In the case where the Licensing Authority is not so satisfied, he or she must refuse the application.

(3) Where an application for the approval of a salesman is granted under this section, the Licensing Authority on payment to him or her of the prescribed fee, must issue to the prospective salesman a certificate of approval in the prescribed form and a copy of the certificate to the applicant.

61 Certificate of approval

(1) A certificate of approval authorises the holder to be employed by the applicant and any partner of the applicant during the currency of the certificate as a motor vehicle salesman.

(2) Every certificate of approval, unless it is sooner cancelled in accordance with this Act, continues in force until the expiry of the year in respect of which it is issued, and may from time to time be renewed for the next succeeding year.

(3) Every approved salesman must produce his or her certificate of approval for inspection on demand by any person authorised by the Licensing Authority, or by any member of the Police, or by any person with whom he or she is dealing in the course of transacting or attempting to transact business as a motor vehicle salesman. Every approved salesman who wilfully contravenes the requirement of this section commits an offence against this Act.

62 Renewal of certificate of approval

(1) An application for the renewal of a certificate of approval must be made to the Licensing Authority in the prescribed form by the licensee by whom the salesman is employed, or, where the salesman is employed by 2 or more licensees in partnership with one another, by any of the licensees by whom he or she is employed, not earlier than 1 January and not later than the last day of February preceding the date of the expiry of the certificate.

(2) The application must not be heard before the expiration of 1 month after the applicant has complied with subsection (2).

(3) Where a notice is given to the Licensing Authority within the time allowed, the application must be heard and determined by the Licensing Authority in the same manner as if it were an application for the issue of a certificate of approval.

(4) In any case to which subsection (6) applies, the salesman is entitled to appear and be heard as a party to the application.

(5) An application for the renewal of a certificate of approval, or any objection thereto, may be heard and determined under this section notwithstanding that the application or the notice of objection is not given within the time limit specified in this section, if the application or notice, as the case may be, is given before the date of the expiry of the certificate of approval.

(6) Where an application for the renewal of a certificate of approval is granted, the Licensing Authority must on payment to him or her of the prescribed fee, endorse the certificate of approval accordingly.

(7) Where an application for the renewal of a certificate of approval has been made but not determined before the date on which the certificate would otherwise expire, the certificate continues in force until the application is determined.

63 Voluntary surrender of certificate of approval

(1) A salesman may at any time surrender his or her certificate of approval by forwarding a written notice to that effect together with the certificate, to the Licensing Authority.

(2) The Licensing Authority must endorse on the notice the date on which he or she receives it, and the certificate, as from that date, ceases to have effect.

(3) The surrender of a certificate of approval under this section does not affect the salesman's liability—

(a) to perform an obligation required to be performed by him or her by or under this Act on or before date on which the certificate would, but for its surrender, expire:

(b) for any act done or default made before the date on which the certificate ceased to have effect.

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Part 6
Dealings in motor vehicles

64 Terms as to title in new and secondhand motor vehicles

(1) In every contract of sale of a motor vehicle (whether new or secondhand) entered into after the commencement of this Part by a licensee in the course of their business, whether as principal or agent, there is implied a term that,—

(a) the vendor is the true owner of the motor vehicle to be sold exchanged, or leased, or is duly authorised by a power of attorney given by the true owner to sell, exchange, or lease the motor vehicle; and

(b) the motor vehicle will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance disclosed to the purchaser in writing by the licensee before the contract becomes binding on the purchaser, or a charge or encumbrance created by or with the express consent of the purchaser) at the time when the property is to pass.

(2) Every person who suffers loss by reason of the breach by a licensee of the term implied in a contract for the sale of a motor vehicle by subsection (1) is, subject to section 35(3) to (6), entitled to claim and receive compensation in respect of the loss out of the Fund in accordance with Part 3.

65 Particulars to be displayed in respect of secondhand motor vehicles

(1) A licensee must not offer or display for sale, or cause or permit to be offered or displayed for sale, a secondhand motor vehicle, unless there is attached to that motor vehicle in prominent position a notice in the prescribed form containing the required particulars.

(2) For the purposes of this section the required particulars are—

(a) the name and business address of the licensee; and

(b) where the vehicle is equipped with an odometer, the reading on the odometer at the time the vehicle was displayed for sale; and

(c) except in the case of a vehicle offered for sale at a public auction, the cash price of the vehicle; and

(d) the year in which the vehicle was first registered or if the vehicle was first registered overseas, the word "ex-overseas"; and

(e) the model designation (if any) of the vehicle; and

(f) the current registration number of the vehicle; and

(g) the engine capacity of the vehicle; and

(h) where the vehicle is or has been used as a taxi the word "ex-taxi"; and

(i) where the vehicle is or has been used as a rental car the words "ex-rental car"; and

(j) the number of previous owners (other than trade owners); and

(k) such other particulars as may be described.

(3) In addition to the particulars set out in subsection (2), there must be set out in the notice to which that subsection applies, or in a separate notice the following further particulars—

(a) in any case where the motor vehicle to which the notice relates is offered or displayed, by the licensee on behalf of a principal, for sale by tender, the words "For sale by tender. No warranty.":

(b) in any case where the motor vehicle is a rebuilt motor vehicle and the certificate of registration is endorsed to that effect, the words "Rebuilt vehicle. No warranty":

(c) in any case where the motor vehicle has been repossessed and is to be sold pursuant to a hire purchase agreement or motor vehicle leasing agreement, the words "Repossessed vehicle. No warranty":

(d) in any case where the motor vehicle was assembled overseas and its age and the distance it has travelled cannot be ascertained, the words "Ex-overseas. No warranty".

(4) In addition to the particulars set out in subsection (2), there must be set out in the notice in which those particulars are set out, the following further particulars,—

(a) whether the motor vehicle is a category A motor vehicle, a category B motor vehicle, a category C motor vehicle, or a category D motor vehicle within the meaning of section 67; and

(b) the maximum extent of the licensee's liability to repair or make good any defects in the motor vehicle in accordance with section 68, expressed in terms of the distance to be driven by the motor vehicle, and the alternative period of time to elapse after the sale, before the licensee's liability under that section will be extinguished.

(5) Every notice to which this section applies must be written clearly and legibly, and of a size that enables a person to read it from a fair and reasonable distance, and attached to the motor vehicle from the time when it is first displayed for sale until the time when it is sold.

(6) A copy of every notice attached to a motor vehicle under this subsection must be retained by the licensee, and, in the event of the vehicle being sold to any person other than a trade owner, a further copy must be given to the purchaser.

(7) Every licensee who—

(a) fails to comply with subsection (1); or

(b) wilfully inserts or authorises or permits to be inserted in any notice attached to any motor vehicle in purported compliance with this section any statement or representation that is false or misleading in a material particular—

commits an offence and is liable on summary conviction to a fine not exceeding $1,500.

(8) Where, in any prosecution for an offence against subsection (7), it is alleged that the defendant wilfully inserted, or authorised or permitted to be inserted in any notice to which that subsection applies any statement or representation that is false or misleading in a material particular with respect to the year in which the motor vehicle was first registered or to the model designation of the motor vehicle, it is a defence if the defendant proves—

(a) that the defendant took all reasonable steps to ascertain the year in which the motor vehicle was first registered, or (as the case may require) to ascertain the model designation of the motor vehicle; and

(b) that to the best of the defendant's knowledge and belief at the time the statement or representation was true and accurate.

66 Odometer readings

(1) For the purposes of sections 64 and 68, where a motor vehicle to which any of

the provisions of those sections applies is fitted with an odometer, the reading shown at any time on the odometer is deemed, in the absence of proof to the contrary, to be accurate.

(2) For the purposes of sections 67 and 68, where a motor vehicle to which any of the provisions of those sections applies is fitted with an odometer that records distance in terms of miles,—

(a) a reference to 40,000 kilometers is deemed to be a reference to 25,000 miles:

(b) a reference to 25,000 kilometres is deemed to be a reference to 15,000 miles:

(c) a reference to 15,000 kilometres is deemed to be a reference to 9,000 miles:

(d) a reference to 5,000 kilometres is deemed to be a reference to 3,000 miles:

(e) a reference to 1,500 kilometres is deemed to be a reference to 1,000 miles.

67 Classification of secondhand motor vehicles for purposes of sections 68 to 70

For purposes of sections 68 to 70—

category A motor vehicle means a secondhand motor vehicle that was first registered less than 2 years ago and that has been driven not more than 15,000 kilometres

category B motor vehicle means a secondhand motor vehicle, not being a category A motor vehicle, that was first registered not more than 3 years ago and that has been driven no more than 25,000 kilometres

category C motor vehicle means any secondhand motor vehicle, other than a category A motor vehicle or a category B motor vehicle, that was first registered not more than 5 years ago and that has been driven not more than 40,000 kilometres

category D motor vehicle means any secondhand motor vehicle that is not a category A motor vehicle, a category B motor vehicle, or a category C motor vehicle.

68 Obligations of licensee in respect of sale of secondhand motor vehicles

(1) Where, after the commencement of this section any licensee sells a secondhand motor vehicle (other than a category D motor vehicle) to any person who does not by reason of the sale become the trade owner of the vehicle, there is implied in the contract of sale a term in the prescribed form that if a defect appears in that vehicle—

(a) in the case of a category A motor vehicle, before the vehicle has been driven a distance of 5,000 kilometres since the date of the sale, or (in the case where the vehicle has not been driven that distance within a period of 3 months commencing with the date of the sale) before the expiration of that period; or

(b) in the case of a category B motor vehicle, before the vehicle has been driven a distance of 3,000 kilometres since the date of the sale, or (in a

case where the vehicle has not been driven that distance within a period of 2 months commencing with the date of the sale) before the expiration of that period; or

(c) in the case of a category C motor vehicle, before it has been driven a distance of 1,500 kilometres since the date of the sale, or (in a case where the vehicle has not been driven that distance within the period of 1 month commencing with the date of the sale) before the expiration of that period,—

whether or not the defect existed at the time of the sale, the licensee must repair or make good, or cause to be repaired or made good that defect so as to put the vehicle in a reasonable condition having regard to its age and the distance that it has been driven.

(2) Where after the commencement of this section, any licensee sells a category D motor vehicle to any person who does not by reason of the sale become the trade owner of the vehicle, there is implied in the contract of sale a term that the licensee warrants—

(a) that the motor vehicle has a current warrant of fitness properly issued under the Transport Act 1966; and

(b) that the motor vehicle is of merchantable quality and is fit for the purpose for which vehicles of that type are usually used.

(3) Despite subsection (1), if, in any case to which that subsection applies it is not practicable for the person in possession of the motor vehicle when the defect becomes apparent to call upon the licensee to repair or make good the defect, or the cause the defect to be repaired or make good and recover the reasonable cost of so doing from the licensee. In such a case the licensee is entitled to a copy of such worksheets or other evidence of the work carried out as the licensee may reasonably specify.

(4) Despite subsection (1), where in any case to which that subsection applies—

(a) the reasonable cost of repairing or making good all defects in the motor vehicle exceeds the sum of $300; and

(b) by reason of the work necessary to repair or make good all such defects having been carried out the value of the motor vehicle, compared to the value that the motor vehicle would have had if none of the defects had existed, is increased by an amount (in this subsection referred to as the betterment increment) that exceeds the sum of $200—

the licensee may, by notice in writing, require the purchaser to pay the licensee the amount of the betterment increment as may be agreed upon by the licensee and the purchaser, or, failing such agreement, as may be determined by the Licensing Authority on application made to him or her in that behalf.

(5) In any case to which subsection (3) applies, subsection (4) also applies; but nothing in subsection (6) applies to any such case.

(6) Despite subsection (4), a licensee is not entitled to recover any sum under that subsection unless, before carrying out the relevant work, the licensee obtains the written consent of the owner of the motor vehicle to the carrying out of that work. In any case where the owner refuses to give his or her consent, the licensee ceases to be under the liability to repair or make good the relevant defect imposed on the licensee by this section.

(7) For the purposes of calculating the period referred to in subsection (1)(a), (b), or (c), no account may be taken of any part of any period during which the licensee has the vehicle in their possession for the purpose or purported purpose of ascertaining or carrying out their obligations under this section.

(8) Nothing in subsection (1) applies to any defect—

(a) in any motor vehicle to which a notice was attached in accordance with section 65 containing the particulars required by any of subsection (3)(a) to (d) of that section if, at any time before the completion of the sale, a copy of that notice is signed by the purchaser and, upon completion, that copy is delivered to the purchaser for retention by them:

(b) in any category C motor vehicle in respect of which all the requirements of section 69 have been complied with:

(c) in respect of which notice was given in accordance with section 70, if, at any time before the completion of the sale, a copy of that notice is signed by the purchaser and, upon completion, that copy is delivered to the purchaser for retention by them:

(d) arising from or incidental to any accidental damage to the vehicle that occurred after the completion of the sale:

(e) arising from misuse by or negligence on the part of a driver of the motor vehicle that occurred after the completion of the sale:

(f) arising from failure to carry out normal maintenance after the completion of the sale:

(g) the extent of which is aggravated by failure to cause repairs to be carried out as soon as practicable after the defect becomes apparent:

(h) arising out of the use of the motor vehicle in any form of motor sport:

(i) occurring in the tyres, battery, or any prescribed accessory to the vehicle:

(j) occurring in the interior trim, the panel work, the paintwork or the external fittings.

(9) Nothing in this section applies to the sale of a motor vehicle where the purchaser was in possession of the vehicle for a period of not less than 3 months immediately preceding the date of the sale.

69 Optional no-warranty in respect of category C motor vehicles

(1) Where a licensee offers or displays for sale, or causes or permits to be offered or displayed for sale, any category C motor vehicle, the licensee may, for the purposes of section 68(8)(b) attach to the motor vehicle a notice in the prescribed form bearing the words "Category C. No Warranty".

(2) Section 68 does not apply in respect of the sale of any motor vehicle to which a notice has been attached under subsection (1), if, at any time before the completion of the sale—

(a) the licensee gives to the purchaser a reasonable opportunity to take the motor vehicle to an independent person of the purchaser's choice for evaluation; and

(b) the purchaser makes a statutory declaration in the prescribed form to the effect that he or she understands that he or she is waiving all rights to which he or she would otherwise be entitled under section 68; and

(c) a copy of the notice referred to in subsection (1) is signed by the purchaser, and upon completion, that copy is delivered to the purchaser for retention by them.

70 Notice of defects

(1) Where a licensee offers or displays for sale, or causes or permits to be offered or displayed for sale, any category A motor vehicle, category B motor vehicle, or category C motor vehicle, the licensee may, for the purposes of section 68(8)(c), attach to the motor vehicle, and keep it attached at all times when the motor vehicle is displayed for sale, a notice in the prescribed for setting out with reasonable particularity each defect that the licensee believes to exist in the vehicle together with their estimate of the reasonable cost of repairing or making good that defect.

(2) If in any notice referred to in subsection (1), the amount estimated by the licensee as the reasonable cost of repairing or making good any defect is less than the true reasonable cost of so doing, the purchaser may at any time within—

(a) 3 months, in the case of category A motor vehicle; or
(b) 2 months, in the case of a category B motor vehicle; or
(c) 1 month in the case of a category C motor vehicle—

after the date of the completion of the sale, require the licensee by notice in writing to pay to the purchaser the difference between the licensee's estimate and the true reasonable cost, and, if the licensee fails to pay the amount as required, the purchaser is entitled to sue for and recover the same as a debt due to him or her from the licensee.

71 Procedure where dispute arises as to licensee's responsibilities, etc

(1) Where a dispute arises involving an allegation that—

(a) the licensee is in breach of the term implied in the contract of sale by section 64; or
(b) a secondhand motor vehicle as sold by the licensee to the purchaser is substantially different from the vehicle as represented in the notice attached to it in purported compliance with section 65; or
(c) a secondhand motor vehicle as sold by the licensee to the purchaser did not have a notice attached to it as required by section 65; and is substantially different from the vehicle as represented to the purchaser by the licensee; or
(d) the licensee has refused or failed to carry out any obligation imposed on them by section 68 or has unreasonably delayed in carrying out any such obligation; or
(e) the licensee is in breach of the term implied in the contract of sale by section 68(2); or
(f) the actual reasonable cost of repairing or making good any defect in a motor vehicle referred to in a notice attached to the vehicle in accordance with section 70 exceeds the licensee's estimate of that cost as stated in the notice,—

the purchaser may make a written complaint to the licensee in accordance with this section.

(2) On receipt of a complaint under this section, the Licensing Authority must forthwith—

(a) refer it to the licensee concerned; and
(b) require the licensee by notice in writing to discuss the complaint with the purchaser, and to make a written report to the Licensing Authority, within

14 days after receiving the notice or such further period as the Licensing Authority may allow, on the outcome of the discussions.

(3) Every report must contain—

(a) a statement by the purchaser that the matter has been settled to his or her satisfaction; or

(b) in any case where no such settlement is reached, a statement by either party that they requires the dispute to be determined by the Licensing Authority.

72 Jurisdiction of Licensing Authority

(1) The Licensing Authority has jurisdiction in accordance with this Part to inquire into any dispute referred to him or her under section 71 if the complainant consents in writing to the investigation of the dispute by the Licensing Authority.

(2) In addition to the jurisdiction conferred on him or her by subsection (1), the Licensing Authority has jurisdiction to determine the amount of the betterment increment to be paid by the purchaser to the licensee in any case to which section 68(4) applies.

73 Procedure of Licensing Authority

(1) As soon as practicable after a dispute is referred to him or her under section 72, the Licensing Authority must inquire into it and must make such order in respect of the dispute as he or she thinks fit and as is authorised by the succeeding provisions of this Part.

(2) The Licensing Authority must conduct his or her inquiry into a dispute in private.

(3) In respect of any dispute, the purchaser and the licensee concerned are entitled to appear before the Licensing Authority and to be heard, but are not entitled to be represented before him or her by a barrister or solicitor.

(4) Where a licensee company is a party to the dispute it is entitled to be represented at the hearing by any officer of the company.

(5) In respect of any dispute, the Licensing Authority may accept such evidence of any matter as he or she considers sufficient, whether or not the same would be admissible in a court of law.

(6) Section 95, with any necessary modifications, applies in respect of hearings of the Licensing Authority.

(7) Every decision of the Licensing Authority, together with the reasons therefor, must be given in writing.

(8) In respect of any dispute, the Licensing Authority may arrange the publication, in a newspaper published in the Cook Islands, of a notice of the subject-matter of the dispute and the Licensing Authority's decision.

(9) Except in a case where the Licensing Authority considers that either party to the dispute has acted vexatiously or frivolously, he or she does not have power to make an award of costs.

74 Determination of disputes alleging breach of implied term

Where any dispute referred to the Licensing Authority under section 72 involves an allegation that the licensee is in breach of the term implied in a contract of sale of a motor vehicle by section 71, he or she may, if satisfied that the licensee is in breach, make an order—

(a) requiring the licensee, within such period as the Licensing Authority may specify in the order, to carry out any work, or to do or refrain from doing anything, as may be necessary to remedy the breach; or

(b) requiring the licensee to pay to the purchaser or to anyone claiming through the purchaser, such sum by way of compensation for the breach as the Licensing Authority thinks fit; or

(c) rescinding the contract, in which case section 74, with any necessary modifications, applies accordingly.

75 Determination of disputes alleging motor vehicle substantially different from that represented

(1) Where any dispute referred to the Licensing Authority under section 72 involves an allegation that a secondhand motor vehicle sold by the licensee to the purchaser is substantially different from the vehicle as represented in the notice attached to it in purported compliance with section 65, the Licensing Authority may, if he or she is satisfied that the vehicle is substantially different as aforesaid—

(a) order that the contract of sale be rescinded in accordance with this section; or

(b) where, having regard to all the circumstances of the case, he or she considers that such an order for rescission would be unwarranted or unjust, order the licensee to pay to the purchaser, or to any other person claiming through the purchaser, such sum not exceeding $3,000 as the Licensing Authority thinks just by way of compensation in respect of the difference in value between the vehicle as represented in the said notice and the vehicle as sold by the licensee—

and, in either such case, the Licensing Authority may make such further or consequential order as he or she thinks fit.

(2) Despite anything in section 73, the Licensing Authority may make an order under subsection (1)(a) in any case where he or she is satisfied that the value of the motor vehicle in dispute does not exceed $12,000.

(3) An order may be made under subsection (1)(a), notwithstanding that the parties cannot be restored to the position that they were in immediately before the contract was made, and in any such case the rights and obligations of each party are as specified in the order.

(4) Where the Licensing Authority makes an order under subsection (1)(a), other than a case to which subsection (2) applies, he or she must, in the order—

(a) require the purchaser to return the vehicle to the licensee; and

(b) require any consideration passed by the purchaser to be returned to him.

(5) Where, in any case in which the Licensing Authority has made an order under subsection (1)(a) in respect of any contract of sale, there is associated with that contract a collateral credit agreement, the purchaser's rights and obligations under that agreement are, on the making of the order, vested in the licensee and may thereafter be enforced by and against the licensee as if they were the purchaser.

(6) In this section, the term **collateral credit agreement**, in relation to a contract for the sale of a motor vehicle, means a contract or agreement arranged or procured by the licensee or by the purchaser for the provision of credit by a person other

than the licensee to enable the purchaser to pay the price reserved by the contract for sale in respect of the motor vehicle.

76 Determination of disputes alleging motor vehicle substantially different from that represented where no notice of particulars

(1) Where any dispute referred to the Licensing Authority under section 72 involves an allegation that a secondhand motor vehicle as sold by the licensee to the purchaser did not have a notice attached to it as required by section 65 and is substantially different from the vehicle as represented to the purchaser by the licensee, the Licensing Authority is satisfied that the vehicle did not have such a notice, the Licensing Authority must, unless the licensee proves that the vehicle is not substantially different as aforesaid, order that the contract of sale be rescinded, and may make such further or consequential order as he or she thinks fit.

(2) Despite anything in section 72, the Licensing Authority may make an order under subsection (1) in any case where satisfied that the value of the motor vehicle in dispute does not exceed $12,000.

(3) Where the Tribunal makes an order under subsection (1), section 75(2) to (5) applies with any necessary modifications.

77 Determination of disputes alleging failure to carry out obligations, etc

(1) Where any dispute referred to the Tribunal under section 72 involves an allegation that the licensee has refused or failed to carry out any obligation imposed by section 68, or that the licensee has unreasonably delayed in carrying out any such obligation, the Licensing Authority may, if satisfied that the licensee has refused, failed, or unreasonably delayed as aforesaid, make an order—

(a) authorising the purchaser to cause the work that would have been necessary to carry out the obligation to be performed by any person named in the order, and to recover the cost of so doing, up to a maximum amount to be specified in the order, from the licensee, or

(b) where the purchaser has already had the necessary work done, requiring the licensee to pay to the purchaser the reasonable costs incurred by the purchaser in respect of that work, being an amount specified in the order—

Provided that the Licensing Authority must not make an order under this paragraph unless satisfied that, before the purchaser had the necessary work done, he or she gave written notice of his or her intention to do so to the licensee or, where the sale took place at a branch office, to the branch manager), and gave the licensee (or branch manager) a reasonable opportunity to inspect the motor vehicle.

(2) In fixing, for the purposes of subsection (1)(a), the maximum amount that is to be recoverable from the licensee, the Licensing Authority must have regard to any quotation in respect of the work that is placed before him or her by either of the parties to the dispute:

Provided that in no case may the Licensing Authority fix the maximum amount at less than the lowest such quotation placed before him or her by either of the parties, nor more than the lowest such quotation placed before him or her by either of the parties, nor more than the lowest such quotation placed before him

or her by the purchaser unless the Licensing Authority is satisfied that any such quotation is unreasonable or unreliable.

(3) Where an order is made under subsection (1)(a) and the purchaser pursuant to the order causes the person named in the order to perform the necessary work, the cost of so doing, up to the maximum amount specified in the order, is recoverable by the purchaser as a debt due from the licensee.

78 Determination of disputes alleging breach of implied term in respect of category D motor vehicles

Where any dispute referred to the Licensing Authority under section 72 involves an allegation that the licensee is in breach of the term implied in a contract of sale of a category D motor vehicle by section 68(2), the Licensing Authority may, if satisfied that the licensee is in breach make an order—

(a) requiring the licensee, within such period as the Licensing Authority may specify in the order, to carry out any work, and to do any other thing, as may be necessary to procure the issue in respect of the motor vehicle of a warrant of fitness under the Transport Act 1966; or

(b) requiring the licensee to pay to the purchaser, or to anyone claiming through the purchaser, such sum by way of compensation for the breach as the Licensing Authority thinks fit; or

(c) rescinding the contract, in which case section 75, with any necessary modifications applies accordingly.

79 Determination of disputes alleging actual reasonable cost of repairing or making good any defect exceeds licensee's estimate

(1) Where any dispute referred to the Licensing Authority under section 72 involves and allegation that the actual reasonable cost of repairing or making good any defect in any motor vehicle referred to in a notice attached to the vehicle in accordance with section 70 exceeds the licensee's estimate as stated in that notice, the Licensing Authority may determine the actual reasonable cost and, where the actual reasonable cost as so determined exceeds the licensee's estimate, make an order requiring the licensee to pay to the purchaser the amount of the excess.

(2) In determining, for the purposes of subsection (1), the actual reasonable cost of repairing or making good any defect, the Licensing Authority must have regard to any quotation in respect of the necessary work that is placed before him or her by either of the parties to the dispute—

Provided that in no case shall the Licensing Authority determine the actual reasonable cost to be an amount that is less than the lowest such quotation placed before him or her by either of the parties, nor more than the lowest such quotation placed before him or her by the purchaser, unless the Licensing Authority is satisfied that any such quotation is unreasonable or unreliable.

80 Enforcement of Licensing Authority's decisions

(1) For the purpose of enforcing any decision of the Licensing Authority, either party to the dispute may file a duplicate of the decision in the office of the High Court, and the decision is thereupon enforceable in all respects as a final judgment of the Court in its civil jurisdiction.

(2) Despite subsection (1), no decision of the Licensing Authority may be registered unless the time allowed for an appeal against the decision has expired and no appeal has been brought.

81 Licensing Authority to submit annual report

(1) The Licensing Authority must submit an annual report to the Minister summarising the disputes dealt with during the year, detailing any cases that in his or her opinion require special mention, and making such recommendations for amendments to this Act (if any) as the Licensing Authority thinks desirable in the light of the experience of the Licensing Authority. Within 28 days after receiving any such report, the Minister must make copies available to the news media.

82 No contracting out

(1) This Part has effect despite any provision to the contrary in any contract of sale or other agreement.

(2) Sections 14 and 56 of the Sale of Goods Act 1908 of the Parliament of New Zealand (as applied to the Cook Islands) and section 11(a) of the Hire Purchase Act 1986 must be read subject to this Part.

83 Application of Act to branch managers

(1) For the purposes of this Act, every branch manager is deemed to be a licensee.

(2) For the purposes of the foregoing provisions of this Part, if any motor vehicle to which this Part applies is sold at a branch office, the motor vehicle is deemed to have been sold by the branch manager and not by the licensee.

(3) In any case to which subsection (2) applies, for the purposes of section 37 the licensee is deemed to have guaranteed the compliance by the branch manager with this Part, and, in the event of default by the branch manager, the licensee is liable accordingly.

84 Form of agreements for sale of motor vehicles

(1) Every agreement for the sale of a secondhand motor vehicle by a licensee (not being an agreement all the parties to which are licensees) must—

(a) be in writing in English and also in the Maori language (being the language commonly known as Cook Islands Maori as spoken in the Cook Island and known as the Rarotongan dialect of that language)—
Provided that a copy of the agreement in the Maori language is not necessary if the purchaser advises the licensee that he or she does not require one; and

(b) be signed by or on behalf of the vendor and the purchaser; and

(c) in a case where the licensee is not the vendor, or where the licensee is the vendor but the sale is negotiated by a manager or salesman employed by the licensee, be signed by the manager or salesman; and

(d) contain a description of the vehicle sufficient to identify it; and

(e) specify the price and any other charges to be paid, and the time and manner in which the price and any other charges are to be paid; and

(f) in a case where the motor vehicle is equipped with an odometer, state the current reading on the odometer.

(2) Any contract that does not comply with subsection (1) is voidable by the purchaser by notice in writing to the licensee (or, as the case may require, the manager) at any time within 1 month after the date of the contract.

(3) Subsection (2) does not apply if the licensee shows—

(a) that the non-compliance was not of such a nature as to mislead or deceive the purchaser to his or her prejudice; or

(b) in any other case, that the vendor has promptly remedied the non-compliance (in so far as it is capable of being remedied) on its being discovered or brought to his or her notice and has, where appropriate, compensated or offered to compensate the purchaser for the prejudice caused by him.

(4) Where, in any case in which a contract is voided under subsection (2), there is associated with that contract a collateral credit agreement, the purchaser's rights and obligations under the contract, vest, on the voidance of the contract, in the licensee and may thereafter be enforced by and against the licensee as if they were the purchaser.

(5) For the purposes of subsection (4), the term **collateral credit agreement** has the meaning assigned to it by section 75(5).

(6) This section applies despite anything in the Hire Purchase Act 1986.

85 Evidence of contract of agency

No person is entitled to sue for or recover any commission, reward, or other valuable consideration in respect of any service or work performed by him or her as an agent in purchasing, selling, exchanging, or leasing any motor vehicle, unless—

(a) they were the holder of a licence at the time when they performed the service or work; and

(b) his appointment to act as agent is in writing signed, either before or after the performance of the service or work, by the person to be charged with the commission, reward, or consideration, or by some person on his or her behalf lawfully authorised to sign the appointment.

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Part 7
Disciplinary provisions

86 Grounds on which licence may be cancelled or licensee suspended

(1) Any person may at any time, with the leave of the Licensing Authority, apply to the Licensing Authority for an order cancelling a motor vehicle dealer's licence or suspending the licensee on any of the following grounds:

(a) that the licensee, or, in the case of a licensee company, any officer of the company, has been convicted of an offence against section 53 or 54:

(b) that the licensee, or in the case of licensee company, any officer of the company, has been convicted of an offence against this Act within 12 months after having been convicted of any other offence against this Act:

(c) that the licensee, or, in the case of a licensee company, any officer of the company, has been convicted of a crime against the person or of a crime involving dishonesty:

(d) that the licensee, or, in the case of a licensee company, any officer of the company, has been guilty of misconduct in the course of his or her or the company's business as a motor vehicle dealer, and that by reason of this misconduct it is in the interests of the public that the licence be cancelled or the licensee be suspended:

(e) that the licensee, or, in the case of a licensee company, any officer of the company, is of such a character that it is in the interests of the public that the licence be cancelled or the licensee be suspended:

(f) that, in the case of a licensee company, the company is in liquidation, or the High Court has made an order for the winding up of the company, or the company has passed a resolution for voluntary winding up:

(g) that the licensee has failed to comply with any requirement of section 50 (relating to the supervision, management, and control of the conduct of their business as a motor vehicle dealer at any place of business).

(2) Despite subsection (1), no order for the cancellation of a licence or the suspension of a licensee may be made on the ground set out in subsection (1)(c) in respect of any offence of which the licensee was convicted before he or she was granted a licence, if—

(a) the conviction was known to the Licensing Authority when he or she granted the licence; or

(b) the offence is not a reportable offence.

87 Suspension of licensee pending determination of complaint

(1) Where an application has been made to the Licensing Authority under section 86(1) and the Licensing Authority is satisfied that it is necessary or desirable to do so having regard to the interests of the public, and to the possibility of further loss or damage occurring if he or she does not make an order under this section, he or she may make an order suspending the licensee in respect of whom the application has been made until the application has been heard and determined.

(2) The Licensing Authority is be obliged to give any notice to the licensee that he or she intends to make an order of suspension under this section.

(3) The Licensing Authority must notify the licensee in writing of any order of suspension made under this section and of his or her reason for making the order, and must, as soon as practicable thereafter, afford the licensee an opportunity to make representations to the Licensing Authority for the revocation of the order.

(4) An order of suspension made under this section comes into force when the licensee is notified of the order in accordance with subsection (3) and while it continues in force, the licensee's licence ceases to have effect, and may not be renewed, and no new licence may be granted to the licensee.

(5) The Licensing Authority may at any time, on his or her own motion or on the application of the licensee, revoke an order of suspension made under this section.

88 Hearing of application for cancellation of licence or suspension of licensee

(1) The Licensing Authority must send a copy of every application made under section 86 to the licensee concerned.

(2) No application may be heard or determined until the expiration of 1 month after the Licensing Authority has complied with subsection (1).

(3) Every application must be prosecuted at the hearing by the complainant, or such other person as the complainant, with the consent of the Licensing Authority may appoint.

89 Licensing Authority may cancel licence or suspend licensee

(1) On an application made under section 86, the Licensing Authority may make an order,—

(a) cancelling the motor vehicle dealer's licence; or

(b) suspending the licensee for any period not exceeding 12 months.

(2) While any order of suspension continues in force, the person to whom the order relates,—

(a) is deemed to be unlicensed; and

(b) is not eligible to act as an officer of a licensee company.

90 Licensing Authority may cancel certificate of approval or suspend salesman

(1) Any person may at any time apply to the Licensing Authority for an order cancelling a certificate of approval or suspending a salesman on any of the following grounds:

(a) that the salesman has been convicted of a crime against the person or of a crime involving dishonesty:

(b) that the salesman has been guilty of misconduct in the course of his or her employer's business as a motor vehicle dealer, and that by reason of that misconduct it is in the interests of the public that the certificate of approval be cancelled or the salesman be suspended:

(c) that the salesman is of such a character that it is in the interests of the public that the certificate of approval be cancelled or the salesman be suspended.

(2) Sections 86(2) and 87 to 89, with any necessary modifications, apply to applications made under subsection (1).

91 Police may institute disciplinary proceedings

(1) Any member of the Police duly authorised by the Commissioner of Police in that behalf may at any time apply to the Licensing Authority an order cancelling

any licence or certificate of approval, or suspending any licensee or salesman on the ground that the licensee or salesman has been convicted of any crime against the person or any crime involving dishonesty.

(2) Sections 86(2) and 87 to 89, with any necessary modifications, apply to applications made under subsection (1).

92 Disciplining of officers and branch managers

(1) Sections 90 and 91, so far as they are applicable and with the necessary modifications, apply to an officer of a licensee company, the chief executive officer of a licensee company, and to a branch manager, as if—

(a) the officer, chief executive officer, or branch manager were a salesman; and

(b) for the words "a certificate of approval" where they first occur in section 90(1) there were substituted the words "the approval of the Licensing Authority given under section 24 or, as the case may require, section 25, or 50(2)"; and

(c) for the words "certificate of approval" where they occur in section 90(b) and (c) and where they occur in section 91 there were substituted in each case the words "approval of the Licensing Authority".

(2) An application may be made under subsection (1) on either of the following grounds—

(a) that the person concerned is no longer eligible to hold a licence in his or her own right:

(b) that, in the case of the chief executive officer of a licensee company or a branch manager, he or she has failed to personally supervise, manage, and control the conduct of the licensees business as a motor vehicle dealer at the principal place of business or branch office in respect of which the approval was given, and at each subsidiary place of business named in the relevant licence.

93 Right of licensee or officer to be heard

Except in the case of a decision to apply for an order of interim suspension under section 87, the Licensing Authority must not exercise any of his or her powers under this Part without first giving to the licensee or officer of the licensee company concerned a reasonable opportunity to be heard.

94 Witnesses may be required to attend and give evidence

(1) The Licensing Authority may, by notice in writing signed by him or her require any person to attend and give evidence before him or her at the hearing of any complaint under this Part, and to produce all books and documents in the person's custody or under their control relating to the subject-matter of any such complaint.

(2) The Licensing Authority may require evidence to be given on oath, either orally or in writing, and for that purpose the Licensing Authority may administer an oath.

(3) Every person commits an offence against this Act who, without lawful justification, refuses or fails to attend and give evidence when required to do so by the Licensing Authority to answer truly and fully any question put to him or

her by the Licensing Authority or to produce to the Licensing Authority any book or document required by the Licensing Authority to be produced by him or her.

(4) Every witness giving evidence or attending to give evidence at the hearing of any complaint by the Licensing Authority under this Part is entitled to such sum for their expenses and loss of time as they would be entitled to if they were a witness in criminal proceedings in the High Court.

(5) Subject to any order as to costs made by the Licensing Authority all sums to which any witness is entitled under subsection (4) must be paid to the witness out of the Fund.

95 Licensing Authority to have certain powers of Commission of Inquiry

Without limiting anything in section 94, the Licensing Authority has, for the purposes of any inquiry, investigation, or appeal under this Part of the Act, the same powers as are conferred on Commissions of Inquiry by section 5 of the Commissions of Inquiry Act 1966.

96 Immunity of witnesses

(1) Witnesses have the same privileges and immunities in relation to complaints heard by the Licensing Authority under this Part as they would have if the complaints were proceedings in the High Court.

(2) The Licensing Authority is not under any criminal or civil liability in respect of anything done or omitted to be done at or for the purposes of the hearing of any complaint under this Part, unless it is proved to the satisfaction of the High Court that the defendant in those proceedings has acted in bad faith.

97 Licensing Authority may award costs

(1) After hearing any complaint under this Part, the Licensing Authority may make such order as to costs as he or she thinks fit, including,—

(a) an order that costs be awarded to the licensee against whom the complaint was made, and that costs be paid out of the Fund:

(b) an order that the licensee concerned pay to the Fund, or to any person, such sum as the Licensing Authority thinks fit in respect of the costs and expenses of and incidental to the inquiry or any preliminary investigation conducted by the Licensing Authority.

(2) An order as to costs may be made under subsection (1)(b), notwithstanding that the Licensing Authority has formally found in favour of the complainant, if the Licensing Authority is satisfied that the making of the complaint was justified, and that it would be fair and reasonable to make such an order.

98 Recovery of penalties and costs

Any sum or ordered by the Licensing Authority to be paid by way of penalty, costs, or expenses is deemed to be a debt due by the person ordered to pay it to the person to whom it is ordered to be paid, and is recoverable accordingly.

99 Form and proof of orders of Licensing Authority

(1) Every decision made by the Licensing Authority under this Part must be given in writing and signed by the Licensing Authority.

(2) Every such decision, other than a decision to apply for an order of interim suspension under section 87, must contain a statement of the Licensing Authority's findings in relation to the case.

(3) Every document purporting to be a decision of Licensing Authority and to be signed by him or her is in the absence of proof to the contrary, deemed to be a decision of the Licensing Authority duly made, without proof of the making thereof, or proof of the signature, or proof that the person signing the decision was in fact the Licensing Authority.

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Part 8
Appeals

100 Appeals to Minister

(1) In every case where the Licensing Authority—

(a) refuses under section 19 to grant an application for a license; or

(b) refuses under section 22 to grant an application for the renewal of a licence; or

(c) refuses under section 23 to permit the removal of a licence to other premises; or

(d) refuses under section 24 to grant an application for approval of a person to act as an officer of a licensee company; or

(e) refuses under section 59 to grant an application for a certificate of approval of a salesman; or

(f) refuses under section 62 to grant an application for the renewal of a certificate of approval of a salesman—

the applicant has the right of appeal to the Minister.

(2) In every case where the Licensing Authority—

(a) cancels a licence or suspends a licensee under section 89; or

(b) cancels a certificate of approval or suspends a salesman under section 90,—

the licensee, or salesman has a right of appeal to the Minister.

(3) Every appeal under this section must be brought within 28 days after the date on which the appellant was notified of the decision appealed against, or within such further period of the decision appealed against, as the Minster may allow.

(4) On hearing the appeal, the Minister may—

(a) confirm or reverse the decision appealed against; or

(b) in the case of an order suspending a licensee, manager, or salesman, vary the period of suspension; or

(c) refer the matter back to the Licensing Authority with directions to reconsider the whole or any specified part of the matter.

(5) Subject to sections 101 and 102, the decision of the Minister on any appeal under this section is final.

(6) Subject to the foregoing provisions of this section, the procedure in respect of any appeal under this section must be determined by the Minister.

101 Appeals to High Court

(1) Any party to an appeal to the Minister under section 100 who is dissatisfied with the decision of the Minister in respect of the appeal has a right of appeal to the High Court.

(2) Every appeal under this section must be brought within 28 days after the date on which the appellant was notified of the decision appealed against, or within such further period as the High Court may allow.

(3) On hearing the appeal, the High Court may—

(a) confirm or reverse the decision appealed against; or

(b) in the case of an order suspending a licensee, manager, or salesman, vary the period of suspension; or

(c) refer the matter back to the Minister with directions to reconsider the whole or any specified part of the matter.

(4) Subject to section 102, the decision of the High Court or any appeal under this section is final.

(5) Subject to the foregoing provisions of this section, the procedure on any appeal under this section must be in accordance with the rules of the High Court.

102 Appeal to Court of Appeal on questions of law

(1) If any party to an appeal under section 101 is dissatisfied with the decision of the High Court in respect of the appeal as being erroneous in law, the party may, with leave of the High Court, appeal to the Court of Appeal of the Cook Islands, by way of case stated, for the opinion of that Court on a question of law:

Provided that if the High Court refuses leave to appeal under this subsection, the Court of Appeal may grant special leave to appeal.

(2) On any appeal under subsection (1), the Court of Appeal may make such order or determination as it thinks fit.

(3) The decision of the Court of Appeal on an appeal under this section, or on any application for leave to appeal, is final.

(4) Subject to the foregoing provisions of this section, the procedure in respect of any appeal under this section must be in accordance with the ordinary rules of the Court of Appeal.

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Part 9
Miscellaneous provisions

103 Offences relating to misdescription of motor vehicles, etc

Every licensee who, with intent to misrepresent the value of any secondhand motor vehicle—

(a) alters or causes to be altered the reading on any odometer with which the vehicle is equipped or removes any such odometer; or

(b) states or represents to any person as the year in which the vehicle was first registered any year other than the actual year in which it was first registered; or

(c) states or represents to any person as the model designation of the vehicle any model designation other than the actual model designation of the vehicle—

commits an offence, and is liable to a fine not exceeding $1,500.

104 Licensee liable for employee's statements

For the purposes of this Act, any statement or representations made by any motor vehicle salesman in the course of his or her employment by a licensee, or by any other person acting on behalf of a licensee, to any other person relating to the quality, description, or history of a secondhand motor vehicle offered or displayed for sale by the licensee is deemed to have been made by the licensee.

105 Licensee not entitled to indemnity from previous owner

(1) No licensee may, in respect of any motor vehicle purchased by him, enter into any contract of indemnity whereby the person from whom the licensee acquires the motor vehicle agrees to indemnify the licensee against any liability that the licensee may incur by virtue of any of the provisions of this Act arising out of the resale of the motor vehicle by the licensee; and any contract purporting to entitle the licensee to such an indemnity is of no effect.

(2) Subsection (1) does not affect any other remedy that the licensee may have against the person from whom they acquired the motor vehicle.

(3) This section does not apply where the licensee acquired the motor vehicle from a trade owner.

106 General penalty for offences

Except where this Act otherwise provides, every person who commits an offence against this Act or against any regulations made under this Act is liable to a fine not exceeding $750.

107 Police to notify reportable offences

(1) Every application for the issue of a licence, the approval of a branch manager, or a certificate of approval, must, as soon as practicable after receipt, be referred to the Police.

(2) As soon as practicable after receiving an application under subsection (1), the Police must notify the Licensing Authority of any reportable offence of which the person in respect of whom the application is made is known by the Police to have been convicted.

108 Evidence of offences

For the purposes of Part 7, a certificate containing the substance of the conviction of any person of an offence against section 53 or 54 or of any crime against the person, or of any crime involving dishonesty, purporting to be signed by the Registrar of the High Court, is, until the contrary is proved, sufficient evidence of that conviction without proof of the signature or official character of the person appearing to have signed the certificate.

109 Decisions and reasons to be in writing

Every decision made under this Act by the High Court or Court of Appeal of the Cook Islands, or by the Licensing Authority or the Minister, together with the reasons therefor, must be given in writing.

110 Certain certificates to be evidence

A certificate in writing signed by the Licensing Authority to the effect that any specified person is or is not the holder of a licence or certificate of approval, or was or was not the holder of a licence or certificate of approval at any particular time or during any specified period, is in any judicial proceedings be sufficient evidence, until the contrary is proved, of the matters referred to in the certificate.

111 Service of documents

(1) Any notice or other document that under this Act may be or is required to be given to or served on any applicant for a licence, or certificate of approval, may be given or served by delivering it to him or her personally, or by leaving it or sending it by post in a registered letter addressed to him or her at his or her residential address or registered office specified in his or her application, or at any address for service specified in his or her application.

(2) Any notice or other document that under this Act may be or is required to be given to or served on a holder of a licence, or certificate of approval, may be served by delivering it to him or her personally, or by leaving it or sending it by post in a registered letter addressed to him—

(a) at his or her usual or last known place of residence in the Cook Islands; or

(b) in the case of a licensee, at his or her registered office; or

(c) in the case of a salesman, at the place of business at which he or she is employed.

(3) Where any notice or other document is sent by post in the manner prescribed by any of the foregoing provisions of this section, it is deemed to have been given to or served on the addressee at the time when the letter would have been delivered in the ordinary course of the post, and in proving service of the notice, it is sufficient to prove that it was duly put into the Post Office as a registered letter.

112 Fees

Subject to any provision of this Act regarding any fees to be paid into the Fund, all fees received under this Act must be paid into the Cook Islands Government Account.

113 Jurisdiction, rights, and remedies conferred by this Act, not exclusive

Except as otherwise expressly provided in this Act, nothing in this Act—

(a) limits the jurisdiction of the High Court; or

(b) affects any right or remedy to which any person may be entitled otherwise than under this Act.

114 Regulations

(1) The Queen's Representative may from this time to time, by Order in Executive Council, make regulations for all or any of the following purposes:

(a) prescribing forms to be used for the purposes of this Act, and the matters to be specified in such forms:

(b) prescribing fees payable under this Act in respect of any application made under this Act:

(c) prescribing the form of any notice required to be attached to any motor vehicle under this Act, and the matters to be specified in any such notice:

(d) prescribing the manner in which and the times at which any such notice is to be attached to any motor vehicle under this Act:

(e) exempting any class or classes or motor vehicles from any of the provisions of section 68:

(f) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act:

(g) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) Any regulations under this section prescribing the fees payable on the issue or renewal of a licence may prescribe—

(a) additional fees in respect of every branch office of the licensee:

(b) smaller fees in respect of branch offices of the licensee in the same locality as their principal place of business:

(c) different fees in respect of different kinds of motor vehicles:

(d) reduced fees in respect of licences issued after 1 April in any year:

(e) reduced fees in respect of licences issued to 2 or more persons carrying on business in partnership.

This Act is administered by the Ministry of Trade, Labour and Transport.
Published under the authority of the Parliament of the Cook Islands.

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Motor Vehicle Dealers (Licence Fees) Order 1987

TABLE OF AMENDMENTS

The Motor Vehicle Dealers (Licence Fees) Order 1987 No 34 was signed on 22 December 1987 and commenced on 1 January 1988.

Amending Legislation	Signed	Date of Commencement
This order has not been amended.		

[The next page is 429,501]

Motor Vehicle Dealers (Licence Fees) Order 1987

TABLE OF PROVISIONS

1 Title and commencement
2 Annual licence fee

[The next page is 429,701]

Pursuant to section 114 of the Motor Vehicle Dealers Act 1986 His Excellency the Queen's Representative acting by and with the advice and consent of the Executive Council, hereby, makes the following order.

1 Title and commencement

(1) This order may be cited as the Motor Vehicle Dealers (Licence Fees) Order 1987.

(2) This order comes into force on 1 January 1988.

2 Annual licence fee

The fee payable by a motor vehicle dealer for every—

(a) application for a motor vehicle dealer's licence; and

(b) renewal of a motor vehicle dealer's licence is the sum of $50.

This order is administered by the Ministry of Trade, Labour and Transport.
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