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Price $4.20

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1986, NO.16

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 (6th August 1986

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 shall come 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 III of this Act 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 his principal place of business) in respect of which he 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 III 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, he shall be 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, section 142, or section 148 or in Part VIII of the Crimes Act 1969, except a crime described in sections 171 to 177, sections 202 to 207 or sections 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 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 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 motor 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 his principal place of business in his application or his 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 V of this Act 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 preceeding 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 preceeding period of,-

(i) Seven years; or

(ii) Three times the number of complete years of detention which he 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 he is not required to hold a licence;

"Term", in relation to a 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 the 1st day of 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 shall be 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 himself out to the public as being ready to carry on the business of purchasing, selling, exchanging, or leasing motor vehicles shall be 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 shall be presumed to be a motor vehicle dealer for the purposes of this Act, unless he proves that he did not purchase, sell, exchange, or lease the motor vehicles for the primary purpose of gain.

(4) Nothing in subsection (3) shall apply 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.

(5) Notwithstanding the foregoing provisions of this section, no person shall be deemed to be a motor vehicle dealer for the pursposes of this Act by reason only of the fact that,-

(a) Being a solicitor, he acts, in the course of his business as a solicitor, as agent in respect of the purchase, sale, exchange, or lease of any motor vehicle, unless he is remunerated for so acting by commission in addition to, or instead of, his professional charges;

(b) Being a manufacturer or wholesaler, he 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, he purchases, in the course of his business as a secondhand dealer, any motor vehicle for wrecking or dismantling by him;

(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) he, -

(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.

4. Sales of motor vehicles by auctioneers - (1) No auctioneer shall be deemed to be a motor vehicle dealer for the purposes of this Act by reason only of the fact that in the course of his business as an auctioneer he sells any motor vehicle if, in respect of such sale, he complies with subsection (2).

(2) Every auctioneer shall keep in the prescribed form a record of every motor vehicle that he sells in the course of his business as an auctioneer.

(3) Every auctioneer shall 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 one such record.

(4) Every record required to be kept under this section, and every book containing more than one such record, shall be open to inspection at all reasonable times by any member of the Police, who may make such copies thereof as he 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 rerquired 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 his possession, custody, or control.

PART I

REGISTRATION OF MOTOR VEHICLE DEALERS

5. Registrar of Motor Vehicle Dealers - The Secretary for Trade, Labour and Transport shall be the Registrar of Motor Vehicle Dealers under this Act.

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

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

(3) On payment to him of the prescribed fee, the Registrar shall 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 shall 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 his 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 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 shall 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 shall 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 shall 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 shall remove those particulars from the Register.

(3) Subsection (2) shall apply 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 himself 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 may, on payment to him of the prescribed fee (if any), issue to the holder of the licence or certificate of approval a substitute licence or certificate of approval.

PART II

LICENSING OF MOTOR VEHICLE DEALERS

11. Motor Vehicle Dealers Licensing Authority - The Secretary for Trade, Labour, and Transport shall be 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 one 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 one place a separate licence is required in respect of each such place of business.

(4) A separate licence shall not be 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 he 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 his or its 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, he 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 he is not licensed, unless he has 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 shall be liable to forfeit to Her Majesty the Queen all money received by him by way of commission or profit for any services or work performed by him as an unlicensed motor vehicle dealer.

(8) All money forfeited to Her Majestry under subection (7) shall be recoverable at the suit of Her Majesty in the High Court, and be 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, -

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

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

(3) No company shall 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 own right,

(4) Every person who applies for or obtains a licence knowing that he is 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 shall make application to the Licensing Authority in the prescribed form.

(2) Every application shall 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 he proposes to carry on businss from more than one place of business, which of those places is to be his 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 shall be accompanied by,-

(a) The prescribed fee; and

(b) A declaration in the prescribed form to the effect that the applicant is elegible to apply for and hold a licence under this Act.

15. Public notice to be given - (1) Every applicant for a licence shall 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 one month after the date of the first publication of the notice, give written notice to the Licensing Authority of his desire to object to the issue of a licence to the applicant.

(3) No objection may be made under subsection (2), except on one 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 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) shall state each ground on which the objection is made.

(5) The person giving the notice of objection shall 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 shall not hear or consider an application for a licence until he is satisfied that the applicant has, -

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

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

(2) Notwithstanding subsection (1), no application for a licence shall be heard or considered before the expiration of one 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), shall be entitled to appear and be heard in respect of the application.

18. Evidence of suitability required - (1) The Licensing Authority shall not grant an application for the issue of a licence to any person (other than a company) unless he is 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 shall not grant an application for the issue of a licence to a company unless he is satisfied that, -

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

(b) Every such person is, by reason of his 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 own right; and

(ii) Is, by reason of his 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 shall not grant an application for the issue of a licence in respect of a branch office unless he is 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 own right; and

(b) Is, by reason of his 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 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 application, not less than 2 years experience as a salesman employed by the holder of a licence.

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

(6) Nothing in this section shall limit the discretion of the Licensing Authority to refuse to grant an application oif he 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 the 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 of the prescribed fee grant the application and issue to the applicant a licence in the prescribed form.

(2) The Licensing Authority shall 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, he shall refuse the application and shall notify the applicant accordingly. In such a case the applicant shall be entitled to a refund of all money paid by him 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 shall carry on business as a motor vehicle dealer under any name or style that is not,-

(a) His 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 one of the partners, -

unless the name or style ahs 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 shall not approve a name or style under subsection (2) if he 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) Notwithstanding any of the foregoing provisions of this section, no licensee shall carry on the business of a motor vehicle dealer under more than one name or style.

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

21. Effect of licence - (1) A licence shall authorise 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 shall be 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 shall, unless it is sooner cancelled, or the licensee is sooner suspended, under this Act, continue 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 shall be made in the prescribed form to the Licensing Authority not earlier than the 1st day of January and not later than the 15th day of February preceeding the date of the expiry of the licence.

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

(3) The application shall not been heard before the expiration of one month after the applicant has complied with subsection (2).

(4) Any person may,before the 7th day of March preceeding 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 his business as a motor vehicle dealer at his principal place of business and each of his 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 him to act as his agent in the conduct of his business as a motor vehicle dealer, -

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

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

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

(8) 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 nothwithstanding 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.

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

(10) 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 shall, notwithstanding section 21 (3), continue in force until the application is determined.

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

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

(3) Sections 14 to 18, so far as they are applicable and with the necessary modifications, shall apply 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 of this Act, 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, he shall grant the application, and shall notify the applicant in writing that the licence will be removed when the Licensing Authority has given his approval to the new premises under subsection (5) of this section.

(5) In any case to which subsection (4) applies, the Licensing Authority, if he is 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, shall,-

(a) Approve that place of business; and

(b) On payment to him 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 this Act of any subsidiary place of business to which that licence relates shall be deemed to be revoked.

24. Licensee not to enter into partnership, except with another licensee - (1) No licensee shall, in respect of his 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 consent - (1) No person shall 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 shall not approve of any person for the purposes of subsection (1), unless he is 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) Notwithstanding 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 one month, or such longer period as the Licensing Authority, on application made to him in that behalf, may allow.

(7) Notwithstanding 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 shall conduct his business as a motor vehicle dealer at any branch office for any period in excess of 14 days otherwise than through the person for 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 shall not approve of any person for the purposes of subsection (1), unless he is 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 who acts in contravention of subsection (1) commits an offence against this Act.

(5) Notwithstanding the foregoing provisions of this section, subsections (6) and (7) of section 24, so far as they are applicable and with the necessary modifications, shall apply in respect of applications made under subsection (1).

27. Voluntary surrender of licence - (1) A licensee may at any time surrrender his licence by forwarding a written notice to that effect, together with the licence, to the Licensing Authority,

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

(3) The surrenderer of a licence under this section shall 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 him 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 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 thinks fit.

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

PART III

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 shall be held by and administered by the Licensing Authority.

(3) The Fund shall consist 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 of this Act;

(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 laufully 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 shall 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, shall pay to the Licensing Authority the following sum:

(a) On application for the issue of a licence, the sum of $2,000.

(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 preceeding year: provided that no sum shall be payable by a licensee in respect of the first and second renewals of his 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 under subsection (1), refund to the motor vehicle dealer such portion of the amount paid as he thinks fit.

33. Motor vehicle dealer may be required to pay levy - (1) If at any time the Fund is not sufficient to satisy 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 thinks fit, not exceeding $150.

(2) The amount of every such levy shall become payable on a date and in a manner fixed by the Licensing Authority, and, if not paid earlier, shall 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 shall at all times retain in the Fund at call at least $20,000.

35. Application of Fund - Subject to this Part of this Act, the Fund shall 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 section 54, relating to the duties of a licensee to account for money received by him 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 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.

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 shall be 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 of this Act; 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 of this Act 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 paragraph (b) of that section, 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 that section, 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 shall be entitled to make a claim against the Fund notwithstanding that he is entitled to any other right or remedy in respect of the same cause:

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

(4) No finance company shall be entitled to make a claim against the Fund, -

(a) Under paragraph (a) or paragraph (b) or paragraph (c) of section 35, 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) or paragraph (e) or paragraph (f) or paragraph (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 shall be entitled to make a claim against the Fund under any of the provisions of section 35 in respect of any loss suffered by him in the ordinary course of his business as a licensee or manufacturer or wholesaler.

(6) No person shall be entitled to recover from the Fund an amount greater than the balance of the loss suffered by him after deducting from the total amount of his loss the amount or value of all money or other benefits received by him from any source other than the Fund in reduction of his 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 shall be payable out of the Fund interest on the amount of the claim so admitted from the date on which the claim was received bny 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 judgements 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 shall be 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 of this Act, the Licensing Authority shall be 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 personal representatives or other persons having authority to administer his 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) Notwithstanding 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 shall be 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) Notwithstanding 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 shall, 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 shall apply accordingly.

38. Provisions applicable if Fund insufficient to satisfy claims.- (1) No money or other property belonging to the Fund shall be available for the satisfaction of any judgement 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 shall, to the extent which they are not so satisfied, be charged against future accummulations of the Fund.

(2) The Licensing Authority, having regard to the rules set out in subsection (3),may determine the order in which judgements and claims charged against the Fund shall be satisfied, and may, if the amount accummulated is not sufficient to satisfy all such judgements 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 shall, in applying the Fund towards the settlement of any such judgments and claims as aforesaid, have regard to the following rules:

(a) He 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 shall 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) Notwithstanding any of the foregoing provisions of this Part of this Act, the Licensing Authority may, in his 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 of this Act.

(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 shall lie 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 the last mentioned motor vehicle dealer if the insurer signifies his 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 shall be paid into the Fund, and shall be applied in or towards the settlement of relevant claims.

(5) No claimant against the Fund shall have 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, 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 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 its licence has been canelled.

(2) In any case to which this section applies the Licensing Authority may, if he 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 his business as a motor vehicle dealer in his possession or under his 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 section 54 in respect of any money received by him or on his behalf in the course of his business as a motor vehicle by him or on his beehalf in the course of his business as a motor vehicle dealer, the Licensing Authority may, if he 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 him or on his behalf in the course of his 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 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 document taken into possession - (1) Upon taking possession of any document under section 40 or section 41, the Licensing Authority shall forthwith serve upon the licensee concerned a notice giving particulars of the document and the date on which it was taken 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 shall be served on each partner in the firm.

(3) Within 14 days after any such notice has been served, the licensee, or any of his 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 whom 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 by sections 40 and 41 in respect of any licensee shall be 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 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 shall be in writing and shall be signed by the Licensing Authority.

(3) Upon production by any person so appointed of his letter of appointment, he shall be entitled, in respect of any licensee or firm of licensees, to exercise any of the powers conferred upoon 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 thre 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 shall not, otherwise than in the course of his report to the Licensing Authority, communicate to any person any matter that may come to his knowledge in the course of his 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 shall communicate to any person any information disclosed in the report, except in the performance of his 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 of this Act, 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 his 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 of this Act, shall be 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 of this Act - 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 to the intent of this Part of this Act.

PART IV

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 shall carry on business as a motor vehicle dealer at any place of business other than his principal place of business, a branch office, or a subsidiary place of business:

Provided that this subsection shall 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 shall limit or affect the right of a licensee, in the ordinary course of his 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 purposes.

48. Licensee to display notice on place of business, etc. - (1) Every licensee shall exhibit and keep exhibited in a prominent place at each of his places of business, so as to be read easily from outside the place of business, a notice of the name or style under which he carries 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 he is a licensed motor vehicle dealer.

(2) The information referred to in subsection (1) shall 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 him in the course of or in connection with his business as a motor vehicle dealer.

(3) It shall be 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 he is a licensed motor vehicle dealer if he exhibits at that place or shows on that document the letters "L.M.V.D."

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

49. Licensee to have registered office - (1) Every licensee shall have a registered office.

(2) Subject to subsection (3), the registered office shall be 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 his registered office to that of any of his branch offices.

50. Supervision of licensee's business - (1) Every licensee (other than a licensee company) shall personally supervise, manage, and control the conduct of his business as a motor vehicle dealer at his principal place of business and at each subsidiary place of business named in the licence relating to his principal place of business.

(2) Every licensee company shall 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) shall, 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 shall not be deemed to be personally supervising, managing, and controlling the conduct of business at any place of business unless he 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 subsection (2) or subsection (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 shall not approve of any person for the purposes of subsection (2), unless he is 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) Notwithstanding the foregoing provisions of this section, subsections (6) and (7) of section 25, so far as they are applicable and with the necessary modifications, shall apply in respect of applications made under subsection (6) of this section.

51. Temporary absence or incapacity of licensee, etc. - (1) Notwithstanding section 50, a licensee may at any time apply to the Licensing Authority for the approval of any person to act in his stead, or (as the case may require) in the stead of its chief executive officer or any of his 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 approval for such period and subject to such conditions as he thinks fit.

(2) The Licensing Authority shall not approve of any person for the purposes of subsection (1), unless he is 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) Notwithstanding the foregoing provisions of this section subsections (6) and (7) of section 25, so far as they are applicable and with the necessary modifications, shall apply in respect of applications made under subsection (1).

52. Employment of salesmen - (1) No licensee shall without the approval of the Licensing Authority given under Part V of this Act, employ as a salesman any person who is not an approved salesman.

(2) Every licensee shall keep in the prescribed form a list of approved salesmen currently employed by him:

Provided that, where 2 or more licensee are in partnership with one another, it shall be 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) shall 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 he is acting or has acted, all money received by a licensee in respect of any transaction in his 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) shall 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 shall pay the money to the principal as soon as he becomes aware of the principal's whereabouts.

(2) No money to which this section applies shall be available for payment of the licensee's debts, nor shall it be 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 creditors.

(3) Where any licensee, in his 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, shall, for the purposes of subsection (1) be deemed to heave 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, he shall 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 him 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 shall be 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) of this section commits an offence and is liable to a fine not exceeding $3,000.

55. Licensee to keep record of transactions - (1) Every licensee shall keep or cause to be kept in the prescribed form a record of -

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

(b) Every transaction in which he has acted as a dealer in relation to any motor vehicle.

(2) Every licensee shall 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 one such record.

(3) Every record required to be kept under this section, and every book containing more than one such record, shall 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 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 his possession, custody, or control.

56. Licensee to produce licence - (1) Every licensee shall produce his 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 shall also keep displayed in a prominent place in his 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.

PART V

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 shall 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 shall be attached to and form part of the application for a licence.

(4) The application shall include the following information:

(a) The full name of the applicant and (where he is a licensee) the address of his 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 shall 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 shall not be heard or determined before the expiration of one month after the applicant has complied with subsections (5) and (6).

58. Temporary permission to employ salesman - (1) Notwithstanding 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 made in that behalf may allow.

(2) Notwithstanding 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 one 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 his 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 shall 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 ntoice is given under this section the prospective salesman shall be 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 of this Act 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 shall grant the application.

(2) In the case where the Licensing Authority is not so satisfied, he shall 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 of the prescribed fee, shall 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 shall authorise 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 shall, unless it is sooner cancelled in accordance with this Act, continue 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 shall produce his 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 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 shall be made to thre 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 is employed, not earlier than the 1st day of January and not later than the last day of February preceding the date of the expiry of the certificate.

(2) The application shall not be heard before the expiration of one month after the applicataand has complied with subsection (2).

(3) Where a notice is given to the Licensing Authority within the time allowed, the application shall 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 shall be 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 shall on payment to him 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 shall continue in force until the application is determined.

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

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

(3) The surrender of a certificate of appproval under this section shall not affect the salesman's liability,-

(a) To perform an obligation required to be performed by him by or under this Act on or before the 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.

PART VI

DEALINGS IN MOTOR VEHICLES

64. Term 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 of this Act by a licensee in the course of his business, whether as principal or agent, there shall be 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) shall subject to subsections (3) to (6) of section 35, be entitled to claim and receive compensation in respect of the loss out of the Fund in accordance with Part III of this Act.

65. Particulars to be displayed in respect of secondhand motor vehicles - (1) A licensee shall 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 shall 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 shall 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 ion 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 shall be written clearly and legibly, and shall be of a size that enables a person to read it from a fair and reasonable distance, and shall be 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 shall 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 shall 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 alse 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 shall be a defence if the defendant proves:

(a) That he 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 his 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 shall be 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 shall be deemed to be a reference to 25,000 miles;

(b) A reference to 25,000 kilometres shall be deemed to be a reference to 15,000 miles;

(c) A reference to 15,000 kilometres shall be deemed to be a reference to 9,000 miles;

(d) A reference to 5,000 kilometres shall be deemed to be a reference to 3,000 miles;

(f) A reference to 1,500 kilometres shall be 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 not more than 25,000 kilometres:

"Category C motor vehicle" means a 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 shall be 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 shall 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 shall be 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) Notwithstanding 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 shall be entitled to a copy of such worksheets or other evidence of the work carried out as he may reasonably specify.

(4) Notwithstanding 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 him 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 in that behalf.

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

(6) Notwithstanding subsection (4), a licensee shall not be entitled to recover any sum under that subsection unless, before carrying out the relevant work, he 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 consent, the licensee shall cease to be under the liability to repair or make good the relevant defect imposed on him by this section.

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

(8) Nothing in subsection (1) shall apply 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 paragraphs (a) to (d) of subsection (3) 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 him;

(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 him;

(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) Occuring in the tyres, battery, or any prescribed accessory to the vehicle;

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

(9) Nothing in this section shall apply 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, he may, for the purposes of category C motor vehicle, he 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 shall 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 understands that he is waiving all rights to which he 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 him.

70. Notice of defects - (1) Where a licensee offers of 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, he 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 he believes to exist in the vehicle together with his 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) Three months, in the case of category A motor vehicle; or

(b) Two months, in the case of a category B motor vehicle; or

(c) One month in the case of a category C motor motor 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 shall be entitled to sue for and recover the same as a debt due to him 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 him 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 shall 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 shall contain -

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

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

72. Jurisdiction of the Licensing Authority - (1) The Licensing Authority shall have jurisdiction in accordance with this Part of this Act to inquire into any dispute referred to him under section 71 if the compalainant consents in writing to the investigation of the dispute by the Licensing Authority.

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

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

(2) The Licensing Authority shall conduct his inquiry into a dispute in private.

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

(4) Where a licensee company is a party to the dispute it shall be 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 considers sufficient, whether or not the same would be admissible in a court of law.

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

(7) Every decision of the Licensing Authority, together with the reasons therefor, shall 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 shall 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 may, if he is 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, shall apply 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 purposted compliance with section 65 he may, if he 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 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 thinks fit.

(2) Notwithstanding anything in section 73, the Licensing Authority may make an order under subsection (1) (a) in any case where he 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 shall be 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 shall, 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 shall, on the making of the order, be vested in the licensee and may thereafter be enforced by and against the licensee as if he 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

the notice attached to it in purposted compliance with section 65 he may, if he 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 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 thinks fit.

(2) Notwithstanding anything in section 73, the Licensing Authority may make an order under subsection (1) (a) in any case where he 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 shall be 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 shall, 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 shall, on the making of the order, be vested in the licensee and may thereafter be enforced by and against the licensee as if he 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, shall, 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 thinks fit.

(2) Notwithstanding anything in section 72, the Licensing Authority may make an order under subsection (1) in any case where he is 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), subsections (2) to (5) of section 75 shall apply 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 on him by section 68, or that he has unreasonably delayed in carrying out any such obligation, the Licensing Authority may, if he is 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 shall not make an order under this paragraph unless he is satisfied that, before the purchaser had the

necessary work done, he gave written notice of his 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 shall have regard to any quotation in respect of the work that is placed before him by either of the parties to the dispute:

Provided that in no case shall the Licensing Authority fix the maximum amount at less than the lowest such quotation placed before him by either of the parties, nor more than the lowest such quotation placed before him by either of the parties, nor more than the lowest such quotation placed before him 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, shall be 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 vehicle - 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 he is 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 shall apply 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 shall have regard to any quotation in respect of the necessary work that is placed before him 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 by either of the parties, nor more than the the lowest such quotation placed before him by the purchaser, unless the Licensing Authority is satisfied that any such quotation is unreasonable or unreliable.

80. Enforcement of the 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 shall thereupon be enforceable in all respects as a final judgment of the Court in its civil jurisdiction

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

81. Licensing Authority to submit annual report - (1) The Licensing Authority shall submit an annual report to the Minister summarising the disputes dealt with during the year, detailing any cases that in his 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 shall make copies available to the news media.

82. No contracting out - (1) This Part of this Act shall have effect notwithstanding 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 shall be read subject to this Part of this Act.

83. Application of Act to branch managers - (1) For the purposes of this Act, every branch manager shall be deemed to be a licensee.

(2) For the purposes of the foregoing provisions of this Part of this Act, if any motor vehicle to which this Part applies is sold at a branch office, the motor vehicle shall be 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 shall be deemed to have guaranteed the compliance by the branch manager with this Part of this Act, and, in the event of default by the branch manager, the licensee shall be 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) shall,-

(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 shall not be necessary if the purchaser advises the licensee that he 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 he 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), shall be voidable by the purchaser by notice in writing to the licensee (or, as the case may require, the manager) at any time within one month after the date of the contract.

(3) Subsection (2) shall 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 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 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, shall, on the voidance of the contract, be vested in the licensee and may thereafter be enforced by and against the licensee as if he were thje 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 shall apply notwithstanding anything in the Hire Purchase Act 1986.

85. Evidence of contract of agency - No person shall be entitled to sue for or recover any commission, reward, or other valuable consideration in respect of any service or work performed by him as an agent in purchasing, selling, exchanging, or leasing any motor vehicle, unless,-

(a) He was the holder of a licence at the time when he 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 behalf lawfully authorised to sign the appointment.

PART VII

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 section 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 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 his or its business as a motor vehicle dealer at any place of business).

(2) Notwithstanding subsection (1), no order for the cancellation of a licence or the suspension of a licensee shall be made on the ground set out in paragraph (c) of that subsection in respect of any offence of which the licensee was convicted before he was granted a licence, if,-

(a) The conviction was known to the Licensing Authority when he 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 occuring if he does not make an order under this section, he 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 shall not be obliged to give any notice to the licensee that he intends to make an order of suspension under this section.

(3) The Licensing Authbority shall notify the licensee in writing of any order of suspension made under this section and of his reason for making the order, and shall, 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 shall come 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 shall cease to have effect, and shall not be renewed, and no new licence shall be granted to the licensee.

(5) The Licensing Authority may at any time, on his own motion or on the applicatipon 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 shall send a copy of every application made under section 86 to the licensee concerned.

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

(3) Every application shall 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) Shall be deemed to be unlicensed; and

(b) Shall not be 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 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) Section 86 (2) and sections 87 to 89, with any necessary modifications, shall 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) Section 86 (2) and sections 87 to 89, with any necessary modifications, shall 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, shall 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 section 50 (2)"; and

(c) For the words "certificate of approval" where they occur in paragraphs (b) and (c) of section 90 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 own right;

(b) That, in the case of the chief executive officer of a licensee company or a branch manager, he 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 shall not exercise any of his powers under this Part of this Act 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 require any person to attend and give evidence before him at the hearing of any complaint under this Part of this Act, and to produce all books and documents in the person's custody or under his 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 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.

(4) Every witness giving evidence or attending to give evidence at the hearing of any complaint by the Licensing Authority under this Part of this Act shall be entitled to such sum for his expenses and loss of time as he would be entitled to if he 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) shall 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 shall, for the purposes of any inquiry, investigation, or appeal under this Part of the Act, have 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 shall have the same privileges and immunities in relation to complaints heard by the Licensing Authority under this Part of this Act as they would have if the complaints were proceedings in the High Court.

(2) The Licensing Authority shall not be 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 of this Act, 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 of this Act, the Licensing Authority may make such order as to costs as he thinks fit, including,-

(a) An order that costs be awarded to the licensee against whom the complaint ws made, and that the 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 not 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 ordered by the Licensing Authority to be paid by way of penalty, costs, or expenses shall be deemed to be a debt due by the person ordered to pay it to the person to whom it is orderd to be paid, and shall be recoverable accordingly.

99. Form and proof of orders of Licensing Authority - (1) Every decision made by the Licensing Authority under this Part of this Act shall be given in writing and signed by the Licensing Authroity.

(2) Every such decision, other than a decision to apply for an order of interim suspension under section 87, shall 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 shall, in the absence of proof to the contrary, be 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.

PART VIII

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 shall have 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 shall have a right of appeal to the Minister.

(3) Every appeal under this section shall 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 Minister 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 shall be final.

(6) Subject to the foregoing provisions of this section, the procedure in respect of any appeal under this section shall 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 shall have a right of appeal to the High Court.

(2) Every appeal under this section shall 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 shall be final.

(5) Subject to the foregoing provisions of this section, the procedure on any appeal under this section shall 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, he 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, shall be final.

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

PART IX

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 registed; 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 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 shall be deemed to have been made by the licensee.

105. Licensee not entitled to indemnity from previous owner- (1) No licensee shall, in respect of any motor vehicle purchased by him, enter into any contract of idemnity whereby the person from whom he 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 shall be of no effect.

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

(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 his principal place of business;

(c) Different fees in respect of different kinds of motor vehicles;

(d) Reduced fees in respect of licences issued after the 1st day of 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 in the Ministry of Trade, Labour and Transport

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(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 personally, or by leaving it or sending it by post in a registered letter addressed to him-

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

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

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

(2) Where any notice or other document is sent by post in the manner prescribed by any of the foregoing provisions of this section, it shall be 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 shall be 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 shall 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 shall-

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

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

114. Regulations-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;

(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, shall, 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 shall 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 VII of this Act, a certificate containing the substance of the conviction of any person of an offence against section 53 or section 54, or of any crime against the person, or of any crime involving dishonesty, purporting to be signed by the Registar of the High Court, shall, until the contrary is proved, be 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, shall 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, shall 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 personally, or by leaving it or sending it by post in a registered letter addressed to him at his residential address or registered office specified in his application, or at any address for service specified in his application.

ANALYSIS

Title
1. Short Title and commencement
2. Motor vehicle dealers
3. Motor vehicle dealers to contribute to fund

1987, No. 21

An act to amend the Motor Vehicle Dealers Act 1969.

(4 December 1987

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 Amendment Act 1987 and shall be read together with and deemed part of the Motor Vehicle Dealers Act 1986 (hereinafter referred to as "the principal Act").

(2) This Act shall come into force on the first day of January 1988.

2. Motor vehicle dealers - (1) The principal Act is amended by inserting after subsection (4) of section 3 the following subsection -

"(4A) Notwithstanding 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, shall be deemed to be a motor vehicle dealer for the purposes of this Act."

(2) Paragraph (e) of subsection (5) of section 3 is amended by inserting after the words "motor vehicle dealer" the words "or a person who carries on the business of renting motor vehicles."

3. Motor vehicle dealers to contribute to fund - Paragraph (a) of subsection (1) of section 32 is amended by adding the words "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."

This Act is administered by the Department of Trade, Labour and Transport.

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