

Chapter 353.
Motor Car Dealers Act 1976.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 353.

Motor Car Dealers Act 1976.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Motor Car Dealers Act 1976,

Being an Act to provide for the control of new and second-hand motor car sale businesses and for the licensing of motor car dealers, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**authorized officer**” means a person appointed under Section 3;

“**the Board**” means the Land Transport Board established by the *Land Transport Board Act 1968*;

“**dealer**” means a person deemed to be a dealer under Section 2;

“**licence**” means a motor car dealer’s licence issued under this Act;

“**licenced dealer**” means a dealer who has been granted a licence under Section 5;

“**motor car**” includes any motor car, motor carriage, motor cycle, motor truck, motor omnibus, motor tractor or other vehicle powered wholly or partly by—

(a) any volatile spirit; or

(b) steam, gas, oil or electricity; or

(c) any means other than human or animal power,

and includes a trailer but does not include a vehicle used on a railway or tramway;

“**owner**” in relation to a motor car that is the subject of a hire-purchase agreement, means the person in possession of that motor car under the agreement;

“**second-hand motor car**” includes a motor car that has, at any time before being offered or displayed for sale, been registered under the *Motor Traffic Act 1950*;

“**this Act**” includes any regulations made under this Act.

2. PERSONS DEEMED TO BE DEALERS.

(1) A person who sells three or more motor cars in any period of 12 months for profit or reward other than to a licensed dealer, shall, for the purposes of this Act, be deemed to be a dealer.

(2) A dealer includes a person who, otherwise than in the capacity of an employee—

(a) carries on the business (whether or not he carries on any other business) of—

(i) selling new motor cars; or

(ii) selling second-hand motor cars; or

(b) holds himself out in any way as carrying on the business of trading in motor cars.

(3) The Minister may, in his discretion on application by a person to whom Subsection (2)(a)(ii) applies, exempt that person from any or all of the provisions of this Act.

3. AUTHORIZED OFFICERS.

The Minister may, from time to time, by notice in the National Gazette, appoint persons to be authorized officers for the purposes of this Act.

4. RIGHT OF ENTRY, ETC.

An authorized officer may at all reasonable times—

(a) enter any building or premises where a licensed dealer carries on his business; and

(b) inspect any motor cars offered or displayed for sale; and

(c) inspect the licensed dealer's record of second-hand cars kept under Section 19; and

(d) inspect the licensed dealer's record of transactions kept under Section 20.

PART II. – LICENSING OF DEALERS.

5. DEALER TO BE LICENSED.

A dealer who—

- (a) carries on the business (whether or not he carries on any other business) of—
 - (i) selling new motor cars; or
 - (ii) selling second-hand motor cars; or

(b) holds himself out in any way as carrying on the business of trading in motor cars,

without being licensed for that purpose under this Act, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

6. APPLICATION FOR LICENCES.

(1) A person may apply for a licence under this Act to conduct the business of—

- (a) a dealer in new motor cars; or
- (b) a dealer in second-hand motor cars.

(2) An application under this section shall be—

- (a) made to the Board in a form approved by the Board; and
- (b) in respect of premises approved for the purpose by an authorized officer; and
- (c) accompanied by such evidence as the Board requires of the applicant's financial ability to carry on the business of a licensed dealer and as to his character,

and shall state that the application is made on behalf of the applicant and for his sole benefit, or on behalf of and for the benefit of himself and other persons whose names and addresses and the extent of whose interest in the business in respect of which the application is made shall also be set out in the application.

7. BOARD MAY GRANT LICENCES.

(1) The Board may grant or refuse an application for a licence.

(2) A licence is subject to such conditions (if any) as are specified in the licence and permits the licensed dealer specified in the licence to carry on the business of trading in the class of motor cars and at the premises specified in the licence.

(3) Where a licence is granted to a person who has applied for the licence on behalf of and for the benefit of himself and other persons, the licence shall contain an endorsement of the names and addresses of the persons other than the licensed dealer in respect of whom and for whose benefit the licence is granted.

(4) Where a licence is endorsed under Subsection (3), a person, whose name is not endorsed on the licence, who, without the approval of the Board, acquires or holds an interest in or derives any benefit from the business carried on by the licensed dealer is guilty of an offence.

Penalty: A fine not exceeding K500.00.

8. ANNUAL FEES.

(1) The fee payable for a licence and for each renewal of licence is K1,000.00.

(2) Subject to Subsection (4), the Board may, for good and proper reason, reduce the fee payable for a licence or renewal of a licence in respect of any person or class of persons.

(3) Where the Board varies the fee it shall make available to the public its reasons in each case.

(4) Notwithstanding Subsection (2), the fee for a licence or renewal of a licence shall not be less than K100.00.

9. DEPOSITS BY LICENSED DEALERS.

(1) It is a condition of a licence granted under Section 7 that the licensed dealer will at all times during the currency of the licence maintain with the Department of Finance a deposit of K3,000.00.

(2) The Board may require a licensed dealer, at all times during the currency of the licence, to maintain with the Department of Finance, in place of a deposit referred to in Subsection (1), a bank guarantee or other security of K3,000.00 in a form approved by the Minister.

(3) Any money deposited under Subsection (1) remains the property of the licensed dealer but any interest arising out of the investment of the money by the Minister shall be paid by him into the Consolidated Revenue Fund.

(4) Any money referred to in Subsection (1) and the bank guarantee or other security referred to in Subsection (2) is security for the discharge of the liabilities of the licensed dealer arising under this Act, and is not applicable in the discharge of any other liabilities of the licensed dealer until those first-mentioned liabilities have been discharged or otherwise provided for to the satisfaction of the Board.

(5) Any money referred to in Subsection (1) and the bank guarantee or other security referred to in Subsection (2) shall not be returned to the licensed dealer after the date on which he ceases to be a licensed dealer unless the Board is satisfied that the liabilities of the licensed dealer in respect of—

(a) any repairs required to be made by the dealer under Section 21 have been made; and

(b) any repairs required to be made or any maintenance required to be carried out by that dealer under any warranty or guarantee given by the dealer on the sale of a new motor car have been made or carried out, as the case may be,

or otherwise provided for to the satisfaction of the Board.

(6) Subject to Subsection (7) the Board may, for good and proper reason, reduce—

(a) the amount of the deposit payable under Subsection (1); or

(b) the amount of the bank guarantee or other security required under Subsection (2),

in respect of any person or class of persons.

(7) Notwithstanding Subsection (6), a deposit and a bank guarantee or other security shall not be less than K100.00.

(8) Where the Board varies the deposit, guarantee or other security it shall make available to the public its reasons in each case.

10. CANCELLATION OF LICENCES.

(1) The Board, where it is satisfied that a licensed dealer—

- (a) has committed an offence against this Act; or
- (b) has failed to perform a duty that he is required to perform under this Act; or
- (c) is not a fit and proper person to continue to hold a licence; or
- (d) has failed to comply with a condition of his licence,

may cancel the licence.

(2) Where a licence is cancelled, the holder must return the licence to the Board within 14 days.

Penalty: A fine not exceeding K50.00.

11. RENEWAL OF LICENCES.

(1) A licence granted under this Act remains in force for 12 months and may be renewed by the Board from time to time for further periods each not exceeding 12 months.

(2) A renewal of a licence under this section may be on the same conditions as the original licence or, if the Board so determines, on different conditions.

(3) The Board, where it is satisfied that a licensed dealer—

- (a) has committed an offence against this Act; or
- (b) has failed to perform a duty that he is required to perform under this Act; or
- (c) is not a fit and proper person to continue to hold a licence; or
- (d) has failed to comply with a condition of his licence,

may refuse to renew the licence.

12. PRODUCTION OF LICENCES.

(1) Every licensed dealer must, at the premises where he carries on his business, produce his licence or licences when required to do so by an authorized officer.

(2) A person who fails to produce his licence or licences when required to do so under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

13. LICENCE TO BE HELD FOR EACH PLACE OF BUSINESS.

(1) A licence shall be issued in respect of one place of business only.

(2) Where a licensed dealer conducts his business at more than one place of business he must obtain a separate licence for each place of business.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K10.00.

(3) A licence shall be endorsed with the address of the place of business in respect of which it is issued.

14. DUPLICATE LICENCE.

Where the Board is satisfied that a licence has been lost or destroyed it may, on payment of the prescribed fee, issue a duplicate licence.

15. REGISTER OF LICENCES.

(1) The Board shall keep or cause to be kept, in the prescribed manner, and shall retain for the prescribed period, a register of licences.

(2) The register shall contain—

- (a) all applications for licences; and
- (b) copies of all licences granted; and
- (c) all cancelled and returned licences; and
- (d) copies of all renewals of licences; and
- (e) any other prescribed information.

(3) The mere production of the register, a copy or an extract from the register certified by the Board or an authorized officer to be the register, or a true copy of a register or a true extract from the register, of licences is evidence of the matters contained in it.

PART III. – DUTIES OF LICENSED DEALERS.

16. SIGN TO BE AFFIXED.

Every licensed dealer must paint or affix in a prominent position at the premises at which he carries on his business a sign showing in words not less than 100mm high, his name and the words “LICENSED MOTOR CAR DEALER” and the number of his licence or licences.

Penalty: A fine not exceeding K500.00.

Default penalty: A fine not exceeding K20.00.

17. PARTICULARS TO BE DISPLAYED.

(1) A licensed dealer must not offer or display for sale a motor car unless there is attached to the motor car a notice showing–

- (a) in words or figures not less than 50mm high the full purchase price; and
- (b) the model and year of manufacture; and
- (c) the odometer reading; and
- (d) the registration number; and
- (e) any other prescribed particulars of the motor car.

Penalty: A fine not exceeding K500.00.

Default penalty: A fine not exceeding K20.00.

(2) On completion of a sale, a licensed dealer must hand to the buyer a memorandum of sale which shall contain–

- (a) the full purchase price; and
- (b) the model and year of manufacture; and
- (c) the odometer reading; and
- (d) the registration number; and
- (e) any other prescribed particulars of the motor car.

Penalty: A fine not exceeding K500.00.

18. SECOND-HAND MOTOR CARS TO BE REGISTERED IN DEALER’S NAME.

A licensed dealer who authorizes or permits the sale of a second-hand motor car without being the registered owner of the car is guilty of an offence.

Penalty: A fine not exceeding K500.00.

19. RECORD OF SECOND-HAND MOTOR CARS.

(1) Every licensed dealer must keep a written record at the premises where he carries on his business of every dealing in new or second-hand motor cars, as the case may be.

(2) The record of dealings in second-hand motor cars shall contain–

- (a) particulars of each motor car including–
 - (i) the name and address of the previous owner; and
 - (ii) the year of first registration; and
 - (iii) the make and model designation (if any); and
 - (iv) the cash price of the car (except in the case of a motor car offered or displayed at a public auction); and
 - (v) the registration number; and
 - (vi) the engine number; and
 - (vii) the mileage recorded.

(3) A licensed dealer who neglects to keep a written record under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(4) The record referred to in Subsection (1) shall be produced by the licensed dealer when required by an authorized officer, an officer of the Police Force, or a prospective buyer.

20. RECORD OF TRANSACTIONS.

(1) Every licensed dealer shall keep a written record in connection with transactions in second-hand motor cars at the premises where he carries on his business of all money received or held by him on behalf of any other person, and of all payments made by him from the money.

(2) The record referred to in Subsection (1) shall be produced by the licensed dealer when required by an authorized officer.

21. OBLIGATIONS OF DEALERS.

(1) Where a new motor car is sold by a licensed dealer to any person and before the expiration of the manufacturers warranty on distance or on time, whichever occurs first, a mechanical or electrical defect appears in the motor car for which the cost of the repair is not less than K50.00, the licensed dealer who sold the motor car shall, whether or not the defect existed at the time of taking delivery, repair or make good, or cause to be repaired or made good, the defect at his expense so as to place the car in a reasonable condition having regard to its age.

(2) Where a second-hand motor car is sold by a licensed dealer to any person and–

- (a) the price of the vehicle exceeds K750.00 or such higher price as is prescribed; and
- (b) before a period of 90 days has elapsed since the date of delivery of the vehicle,

a mechanical or electrical defect appears in the motor car for which the cost of repair is not less than K50.00 the licensed dealer who sold the motor car shall, whether or not the defect existed at the time of taking delivery, repair or make good, or cause to be repaired or made good, the defect at his expense so as to place the car in a reasonable condition having regard to its age.

(3) Subsection (1) does not apply to or in relation to any defect–

- (a) arising from or incidental to any accidental damage to the motor car that occurred after the taking of delivery; or

- (b) arising from misuse or negligence on the part of a driver of the motor car that occurred after the taking of delivery; or
- (c) occurring in the tyres, battery or any prescribed accessory of the motor car; or
- (d) being a defect which, by virtue of Section 22, that subsection does not apply; or
- (e) being damage to the paint work, body work or upholstery, that would have been apparent on a reasonable inspection of the motor car at the time of taking delivery.

(4) This section does not apply to—

- (a) the sale of a motor car to any person who has had the motor car under his control or in his possession for a continuous period of not less than 90 days immediately before the sale; or
- (b) the sale of a motor car to an employee of the dealer or, where the dealer is a corporation, to a related company of the dealer.

(5) Where a licensed dealer acts on behalf of another licensed dealer in the sale of a second-hand motor car, this section shall not apply to the licensed dealer on whose behalf the second-hand motor car is sold.

(6) For the purposes of Subsection (4), where a company—

- (a) is the holding company of another company; or
- (b) is a subsidiary of another company; or
- (c) is a subsidiary of the holding company of another company,

the first-mentioned company and that other company shall, for the purposes of this Act, be deemed to be related companies.

22. EXCLUDED DEFECTS.

(1) A licensed dealer may affix or attach to any second-hand motor car offered or displayed for sale a notice setting out any defect that he believes to exist in that motor car together with, in relation to each defect, his estimate of the fair cost of repairing or making good the defect.

(2) If—

- (a) a notice complying with Subsection (1) has at all material times been attached to the motor car; and
- (b) at or before the time of sale a copy of the notice has been signed by the purchaser; and
- (c) on the sale a true copy of the notice signed by the purchaser has been delivered to the purchaser for retention by him,

Section 21 does not apply to or in relation to any defect set out in the notice.

PART IV. – OFFENCES.**23. FALSIFYING MILEAGE.**

(1) A person who–

- (a) makes a statement as to the mileage travelled by a motor car that he knows to be false or does not believe to be true; or
- (b) with intent to deceive–tampers with any instrument or device used for the recording of mileage in a motor car; or
- (c) with intent to deceive–instals in substitution for an instrument or device used in a motor car, for the recording of mileage of the motor car another instrument or device for recording the mileage of the motor car,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Where it is proved that any instrument or device used in a motor car for recording the mileage of a motor car has been tampered with or substituted whilst the motor car has been on the premises of a licensed dealer or in his possession, custody or control, the tampering or substitution shall, unless the licensed dealer proves the contrary, be deemed to have been done with intent to deceive by or on behalf of the licensed dealer.

24. GIVING FALSE INFORMATION.

A person who wilfully gives false information to a licensed dealer with respect to any matter of which under this Act a licensed dealer is required to keep a record, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

25. DEALING WITH YOUNG PERSONS.

A licensed dealer who buys from, sells to, gives to or takes from in exchange or receives possession of a second-hand motor car from a person who is apparently under the age of 18 years or purports to do so is guilty of an offence.

Penalty: For a first offence–a fine not exceeding K100.00.

For a second and subsequent offence–a fine not exceeding K500.00.

26. OBSTRUCTION OF AUTHORIZED OFFICER.

A person who–

- (a) hinders or obstructs an authorized officer in the execution of his duty; or
- (b) does not, when requested by an authorized officer to do so, produce records required to be kept by him under Sections 19 and 20; or
- (c) impersonates an authorized officer,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

27. OFFENCE BY OFFICER OF COMPANY.

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation he, as well as the corporation, shall be deemed to have committed that offence and is guilty of the offence.

Penalty: A fine not exceeding K500.00.

PART V. – MISCELLANEOUS.

28. APPEALS.

(1) A person aggrieved by a refusal of the Board under Section 7(1) to grant an application for a licence may appeal to a Principal Magistrate within 28 days after receiving notification of the refusal on the grounds that–

- (a) the Board failed to give reasons for the refusal; or
- (b) the reasons are not in the best interests of the country; or
- (c) the Board failed to consider all the circumstances of the application.

(2) A person aggrieved by a decision of the Board under Section 10(1) to cancel a licence or under Section 11(3) to refuse to renew a licence may appeal to a Principal Magistrate within 28 days of receiving notification of the cancellation or refusal to renew the licence.

(3) The decision of the Magistrate on the appeal under Subsections (1) and (2) is final.

29. REGULATIONS.

The Head of the State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and in particular for prescribing the imposition of penalties of fines not exceeding K200.00 for offences against the regulations.

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