

COMMERCE COMMISSION
"fitandprobersubmissions@comcom.govt.nz"

Regarding "Criteria for Certification" under the CCCFA Act 2003

Background

- This submission is on behalf of The Colonial Motor Company Limited ("CMC") and its dealerships.
- CMC is the owner of 18 of motor vehicle dealerships registered under the Motor Vehicles Sales Act 2003.

These 18 dealerships were responsible for retailing over 14,000 vehicles in 2019.

- All these dealers primary role is to sell motor vehicles and often in doing so they facilitate customers access to vehicle finance through finance companies for credit sales agreements.
- None of these dealerships operate their own finance business.
- The nature of these credit sales agreements is that dealership staff collect information from the customer to assist the customer complete a credit application for the finance company, who then undertake their own credit and affordability assessment before approving or declining a loan on the vehicle.

Our Submission

1. "Fit and Proper" person declaration

- All these dealerships are "registered" under the Motor Vehicle Sales Act 2003, under the control of MBIE and the dealerships already provide a "fit and proper" person "statutory declaration" for Directors and Senior Management which is renewed annually.
- The new proposed draft regulation would merely repeat an existing "fit and proper" person declaration.
- We submit that the existing "fit and proper" "statutory declarations" under the "Motor Vehicles Sales Act 2003" should be all that is required for a registered Motor Vehicle Dealer. It should not be necessary for the same persons from the same Motor Vehicle Dealer to also have to provide a "fit and proper" statutory declaration under the "Credit Contracts and Consumer Finance Act 2003" for the same business.
- Duplication of regulation under two different acts to two different government departments for the same group of people is unnecessary bureaucracy.
- In addition the proposed criteria on Table 1 and Table 2 is generally a repeat of the declaration in the Motor Vehicles Sales Act 2003" – see copy attached.

2. **Exemption where provision of finance is incidental to the supply of goods**

- It would appear that depending on which finance model a particular finance company operate – i.e. any combination of Agency, Assignment and/or Securitisation the interpretation on who should be included to provide a “fit and proper” person declaration can vary.
- Under an assignment model the vehicle dealership is technically involved in the Credit Sales Agreement for a “moment in time” as part of the paperwork process.

Registered Motor Vehicle Dealers who provide credit services under a credit contract that is incidental to the supply of goods (AML) should continue to be exempt – section 59B.

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STATUTORY DECLARATION

Motor Vehicle Trader Name:
Motor Vehicle Trader Number:

I, _____ of _____, New Zealand do
solemnly and sincerely declare as follows:

1. My date of birth is _____
2. That I am not disqualified from registration as a motor vehicle trader in my own right in terms of section 24 or 25 of the Motor Vehicle Sales Act 2003 (see attached information sheet).
3. I have made all the necessary inquiries to ensure that the information contained in this application is true and correct.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Signature of person making this declaration.

Note: You must sign this declaration in the presence of the witness.

This section must be completed by someone authorised to witness a statutory declaration.
(See attached information sheet for qualification of who may witness)

Declared at: (print town or suburb) _____.

On the _____ day of _____ 20 ____.

Before me, being a person authorised under the Oaths and Declarations Act 1957.

(Signature of witness)

Printed name, address and qualification of witness (including stamp if applicable).



STATUTORY DECLARATION INFORMATION SHEET

The statutory declarations that are attached must be completed and witnessed by a solicitor, Justice of the Peace or a person authorised under the Oaths and Declarations Act 1957.

Who needs to sign the forms?

If you are completing a new application to become a registered motor vehicle trader, each individual (sole trader), and each person concerned in the management of the company must complete a statutory declaration.

A manager is a company director or any person occupying the position of chief executive of that company.

Please note: At this point all current directors should be listed on your application including their full name (as per their birth certificate) and this should match what is listed on the Register of Companies. If this is not correct your application will be unable to be processed until all the information is up to date.

What is this declaration for?

By signing the attached form you are confirming the following:

- Your date of birth
- That you are not disqualified from registration as a motor vehicle trader in your own right (see below)
- That you have made all necessary inquiries to ensure that the information contained in the application is true and correct.

When the statutory declaration is submitted a check will be made to determine that you are not disqualified from registration for any reason (as per Section 24 and 25 of the Motor Vehicle Sales Act 2003).

Am I disqualified from registration?

Individuals disqualified from registration include the following:

- a) a person under 18 years of age; or
- b) a banned person; or
- c) an undischarged bankrupt; or
- d) a disqualified director on the Register of Companies; or
- e) a person who has been convicted of a crime involving dishonesty within the preceding 5 years; or
- f) a person whose registration has been cancelled under section 42 within the preceding 5 years.

Please refer to the Motor Vehicle Sales Act 2003 to see the full list of disqualified individuals.

A company is disqualified from registration if:

- a) the company is a banned person; or
- b) the company is in liquidation; or
- c) the company has been removed from the Register of Companies; or
- d) a person concerned in the management of the company is disqualified from registration in his or her own right under section 24; or
- e) the company's registration as a motor vehicle trader has been cancelled under section 42 within the preceding 5 years.

Who can witness this statutory declaration?

Under the Oaths and Declarations Act 1957 a statutory declaration made in New Zealand can be

made before:

- a) a barrister and solicitor of the High Court; or
- b) a Justice of the Peace; or
- c) a notary public.

For the full list of who can witness a statutory declaration (including persons authorised to witness a statutory declaration outside of New Zealand) please refer to the Oaths and Declarations Act 1957.